

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEW JERSEY

3

4 ASSOCIATION OF NEW JERSEY
5 RIFLE & PISTOL CLUBS, INC.,
6 PLAINTIFF

7 Vs.

CIVIL NO.
18-10507 (PGS)

8 GURBIR GREWAL, et al,
9 DEFENDANTS

10

11

AUGUST 17, 2018

12

CLARKSON S. FISHER COURTHOUSE
402 EAST STATE STREET
TRENTON, NEW JERSEY 08608

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B E F O R E:

THE HONORABLE PETER G. SHERIDAN
U.S. DISTRICT COURT JUDGE
DISTRICT OF NEW JERSEY

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20 **PRELIMINARY INJUNCTION HEARING - DAY 3**

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Certified as true and correct as required
by Title 28, U.S.C. Section 753

24

/s/ Francis J. Gable
FRANCIS J. GABLE, C.C.R.

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OFFICIAL U.S. REPORTER
(856) 889-4761

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7 EXHIBITS

8	Plaintiff's Exhibit 50, 83 & 84 were marked into evidence	260
9	Defendant's Exhibit 115, 116 & 117 were marked into evidence	261
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1 THE COURT: Next witness?

2 MR. THOMPSON: Your Honor, we have just a couple of
3 quick evidentiary points to put on the record if we may.

4 THE COURT: You may.

00:00 5 MR. THOMPSON: We have -- number one, we have now
6 the hard copy of PX-50, and we also have a hard copy stickered
7 of PX-83 and 84 that were admitted into evidence yesterday.
8 So with the Court's permission I will give them to the Court's
9 law clerk.

00:00 10 THE COURT: Can you just identify what each one was?

11 MR. THOMPSON: Sure, yes, your Honor. So PX-50 is
12 Firearm Related Violence; and then PX-83 is the Gallup poll
13 that was the subject of discussion yesterday; and then we've
14 got PX-84, which is a study by Dr. Fox entitled the Tenuous
00:00 15 Connections Involving Mass Shootings, Mental Illness and Gun
16 Laws.

17 THE COURT: All right. Mr. Showell, do you object
18 to the admission of those documents?

19 MR. SHOWELL: I do not.

00:01 20 THE COURT: All right. So PX-50, 83 and 84 are
21 admitted.

22 MR. THOMPSON: Yes, your Honor.

23 (Plaintiff's Exhibit 50, 83 & 84 were marked into
24 evidence.)

00:01 25 MR. THOMPSON: And then Mr. Showell has some

1 documents, FBI report, the USA Today report, and I'd like to
2 say on the record we have no objection to that coming in
3 because these are legislative facts, and we believe the
4 parties and the Court are permitted to cite to anything at any
5 time.

6 THE COURT: All right. Do you wish to place those
7 in evidence, Mr. Showell?

8 MR. SHOWELL: Thank you, your Honor, yes, I would.
9 The defense offers what's been marked as DX-115, which is a
10 USA Today piece entitled FBI: More Active Shooting Incidents
11 in 2017 Than Any Other Year Recorded; DX-116, which is an
12 article relating to active shooting incidents in the United
13 States in 2014 and '15, and I believe that's an FBI related
14 document; and then DX-117, which is an FBI report as of April,
15 2018, entitled Active Shooter Incidents in the United States
16 in 2016 and 2017. I'd like to move those into evidence, your
17 Honor.

18 THE COURT: No objection; right, Mr. Thompson?

19 MR. THOMPSON: No objection, your Honor.

20 THE COURT: All right. So they're admitted, 115,
21 116 and 117.

22 (Defendant's Exhibit 115, 116 & 117 were marked into
23 evidence.)

24 THE COURT: Next witness?

25 MR. THOMPSON: Professor Kleck will take the stand,

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1 your Honor.

2 (GARY KLECK), sworn.

3 THE DEPUTY CLERK: State your name for the record.

4 THE WITNESS: Gary Kleck.

00:03 5 THE COURT: You may be seated, Mr. Kleck. Would you
6 once you are seated just spell your last name for us?

7 THE WITNESS: K-l-e-c-k.

8 THE COURT: Thank you.

9 MR. SHOWELL: Your Honor, just as a housekeeping
00:03 10 matter, I've got some binders I'd like to distribute.

11 THE COURT: Sure.

12 (Handing to Court and witness.)

13 (CROSS-EXAMINATION OF GARY KLECK BY MR. SHOWELL:)

14 Q. Good morning, Professor Kleck.

00:05 15 A. Good morning.

16 Q. You're familiar with the New Jersey law banning large
17 capacity magazines that is the subject of plaintiff's legal
18 challenge in this case; correct?

19 A. Yes.

00:05 20 Q. That law, which I will refer to as A2761, the assembly
21 bill number, does not limit an otherwise qualified
22 individual's ability to own a firearm -- and when I say
23 otherwise qualified individual, I mean someone who isn't a
24 convicted felon for example -- does it?

00:05 25 A. That's correct.

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1 Q. So, consistent with your understanding, if I were
2 otherwise legally qualified to own a firearm in New Jersey,
3 before the passage of A2761, there's nothing in that law that
4 prohibits me from owning a firearm after the passage of A2761;
5 is that right?

6 A. Yes.

7 Q. A2761 likewise does not prevent a private citizen in New
8 Jersey from purchasing legal ammunition; isn't that right?

9 A. Yes.

10 Q. And A2761 does not limit the amount of legal ammunition a
11 private individual may purchase; is that right?

12 A. Yes.

13 Q. A2761 also does not limit the number of ammunition
14 magazines capable of holding 10 or fewer rounds that a private
15 individual may own; is that correct?

16 A. Yes.

17 Q. Nor does A2761 limit the type of magazine a private
18 individual may own. And when I say type of magazine, I mean
19 the statute doesn't limit my choice to purchase, for example,
20 a box-type magazine or a drum-style magazine or a coil-type
21 magazine; is that correct?

22 A. Yes.

23 Q. And that's provided that whatever magazine I choose
24 doesn't have a capacity in excess of 10 rounds; isn't that
25 right?

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1 A. Yes.

2 Q. And A2761 likewise does not prohibit private citizens
3 from using a firearm capable of firing as many as 11 rounds
4 without reloading for self-defense in the home; is that
5 correct?

6 A. Yes.

7 Q. And when I say 11 rounds, that's because some firearms
8 may permit the user to chamber one round while still also
9 having 10 rounds in the magazine for a total of 11; is that
10 correct?

11 A. Yes.

12 Q. Nor, does A2761 regulate the type of otherwise lawful
13 firearm an individual may employ in the home for self-defense;
14 is that right?

15 A. Yes.

16 Q. And am I correct that it's your understanding that prior
17 to the passage of A2161, firearms ammunition magazines with a
18 capacity of 15 rounds or fewer were lawful to possess in New
19 Jersey?

20 A. That is my understanding.

21 Q. You were an expert witness for the plaintiffs in the
22 Duncan v. Becerra case in the Federal District in California;
23 isn't that correct?

24 A. Yes.

25 Q. I will represent to you that your reply declaration in

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1 Duncan was submitted to this Court on plaintiff's preliminary
2 injunction application in this case as part of plaintiff's
3 reply papers. Take a look at tab 2 in the binder that I have
4 placed before you, and I'm just going to ask you, is that your
5 reply declaration from the Duncan case?

6 A. Tab 10?

7 Q. Tab 2.

8 A. 2; sorry.

9 Yes, this looks like my supplementary declaration.

10 Q. And if you turn to page 27 of tab 2, bearing your
11 signature line at the bottom right, did you sign that
12 declaration in Duncan on or about June 9th, 2017?

13 A. I couldn't swear to the date; yeah, if you say about
14 loosely, yeah, it says June 9th, 2017, so I'm assuming that's
15 when I signed it.

16 Q. I'm going to direct your attention to page 12 of tab 2 to
17 your reply in Duncan. And in particular I'm going to be
18 asking you about paragraph 28. But as with any question I ask
19 you about a particular document, if you feel you need to look
20 at other paragraphs in the document to put your response to
21 any question in context, please feel free to do that.

22 THE COURT: So what's the question?

23 MR. SHOWELL: I'm getting there, Judge.

24 Q. The general subject matter of that paragraph is mass
25 shootings incidents involving large capacity magazines; is

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1 that fair to say?

2 A. In part, yes.

3 Q. And you state in paragraph 28 that, "the data indicate
4 that there were at least 992 mass shootings (4 or more
5 victims) in the U.S. in 2014 through 2016 (Shootingtracker.com
6 2017), but only nine mass shootings in which an LCM was known
7 to have been used (Violence Policy Center 2017)."

8 Isn't that correct?

9 A. That's correct.

10 Q. And then you noted in the next sentence of paragraph 28
11 that the nine out of 992 rate of LCM involved mass shootings
12 "implied that only about 8/100ths of 1 percent of mass
13 shootings were known to involve the use of magazines with a
14 capacity exceeding 10 rounds"; but nine out of 992 is not
15 8/100ths of a percent, it's closer to 1 percent; correct?

16 A. Okay, I'll concede it's closer to one percent.

17 Q. Well, that's a pretty significant mathematical error,
18 isn't it? I mean that's orders of magnitude off.

19 A. No, it's not orders of magnitude off. I mean 8/100ths of
20 1 percent is really really small, and so is one -- so is a
21 little under 1 percent.

22 Q. Well, actually it's a little bit over 1 percent.

23 THE COURT: Was that a question?

24 A. I'll fully concede it's a little under 1 percent. In
25 other words, the point that I made that the other side's

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1 expert was way off was absolutely correct.

2 Q. And you performed the same careful review of your reply
3 declaration in Duncan as you did of your declaration in this
4 case, because you knew a federal judge would rely on that
5 declaration in deciding an important issue of constitutional
6 dimension; isn't that right?

7 A. No, it wouldn't be my motivation, my motivation was I
8 always try to be as careful as I can in my research regardless
9 of how the information is going to be used.

10 Q. But notwithstanding that care you made a significant
11 mathematical error; isn't that correct?

12 A. No, I made a trivial mathematical error.

13 Q. We'll agree to disagree about that.

14 A. Okay.

15 Q. You don't expect this Court to rely on paragraph 28 of
16 your reply declaration in Duncan in this case given the
17 obvious error in it, do you?

18 A. Yes, I do, because the conclusion is unchallenged. Even
19 after one takes account of the error the conclusion is
20 precisely the same and thus can be relied upon by this Court
21 or any other.

22 Q. Let's take a moment and turn to your declaration in this
23 case which appears at tab 1 in the binder in front of you in
24 particular. I'd like to direct your attention to paragraph 4
25 at the bottom of page 3, and it's going to carry over on to 4.

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1 And specifically I'm going to ask you about the text appearing
2 on page 4.

3 Is it fair to say that you've conducted research on
4 defensive gun use?

00:14 5 A. Yes.

6 Q. Would it also be fair to say that at least a portion of
7 that research involved estimating the magnitude of annual
8 defensive gun uses in the United States?

9 A. Estimating the prevalence, yes.

00:14 10 Q. And you stated in paragraph 4 of your declaration that
11 you estimated that in 1993, "there were approximately 2.5
12 million defensive gun uses in which victims used guns for
13 self-protection." Is that right?

14 A. Yes.

00:15 15 Q. And that estimate was not confined to defensive gun uses
16 in the home, which would be a much smaller subset of that 2.5
17 million number; is that correct?

18 A. Yes.

00:15 19 Q. And that estimate of 2.5 million annual defensive gun
20 uses was based on a survey you designed with Professor Mark
21 Gertz, which became the foundation of your article entitled
22 Armed Resistance to Crime - The Prevalence and Nature of
23 Self-Defense With a Gun; is that correct?

24 A. Yes.

00:15 25 Q. The 13 or so other surveys that you reviewed in

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1 connection with your 1995 paper suggest that a range in
2 numbers of annual defensive gun uses of between 764,000 and
3 3.6 million; is that correct?

4 A. Yes. And I pointed out that they weren't counting the
5 same thing so you wouldn't expect the numbers to be the same.

6 Q. And you made your 1993 estimate of defensive gun uses in
7 what was perhaps the peak year for violent crime in America in
8 the throes of the crack cocaine epidemic; is that correct?

9 A. Yes.

10 Q. And when I asked you in your deposition why you didn't
11 bring to the Court's attention your 2015 interview with the
12 journalist Ari Armstrong in which you estimated that then
13 current numbers of annual defensive gun uses were
14 approximately half your original 2.5 million estimate, you
15 said because the 1.2 million number was a guess for which you
16 didn't have good data; is that correct?

17 A. It was a guess for which I had no data at all. That's
18 why it was not an estimate, it was just a guess. Anybody can
19 guess anything about any topic.

20 Q. It's a fact is it not that you testified in the
21 Hickenlooper trial in Colorado that your best guess of annual
22 defensive gun uses at the time of that trial were
23 approximately 1.2 million?

24 A. Again, stressing that it's a guess I did indeed say that,
25 yeah.

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1 Q. So you were comfortable testifying under oath in Colorado
2 that annual defensive gun uses were approximately 1.2 million,
3 but you didn't think it was important for this Court to know
4 that, instead you were relying on 25 year old data in that
5 regard which estimated 2.5 million defensive gun uses in 1993
6 as a basis for your statement in paragraph 4 of your
7 declaration; is that right?

8 A. I not only didn't think it was appropriate to mention it
9 in accord, I thought it would be positively irresponsible of
10 me to present a guess as if it were real evidence. That would
11 be deceptive.

12 Q. But you're presenting estimates in any event; correct?

13 A. Estimates are evidence based, I mean based on the most
14 rigorous method we have available, which are survey methods;
15 using well-established procedures to get representative
16 samples of the U.S. population, and then using very thoroughly
17 vetted methods of asking people clearly worded questions
18 they'll understand.

19 Whereas a guess isn't based on anything but, you know,
20 just, you know, whatever you want to say at the moment. And
21 in the Hickenlooper case the -- I'm sorry, in the Ari
22 Armstrong interview, the only reason I said 1.2 million was it
23 was about half as much as 2.5 million which is what my 1993
24 survey had indicated.

25 And the reason I guessed it might be half was I didn't

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1 have any real data from more recent years at that time; I do
2 now but didn't then. And so the best foundation for a guess
3 would be to take one factor into account that would influence
4 real estimates, which is, you know, how much crime was there;
5 if there's less crime there's less occasion to use guns for
6 self-protection.

7 There was about half as much crime as that time
8 compared to 1993. So I took a guess; well if that's the only
9 factor we're taking account of then you'd expect about half as
10 many defensive gun uses.

11 Q. Getting back to your paper, the 1995 paper on defensive
12 gun use that was previously marked as Joint Exhibit 10, it's a
13 fact, is it not, that there are academics who have criticized
14 your estimate of 2 and a half million annual defensive gun
15 uses?

16 A. Yes.

17 Q. And among those academics are David Hemingway, professor
18 at Harvard; isn't that right?

19 A. Yes.

20 Q. And Professor Hemingway published a journal article which
21 among other things critically examined your claim of 2.5
22 million annual defensive gun uses; correct?

23 A. Yes.

24 Q. And in fact you and Professor Hemingway had a pretty
25 public back-and-forth in an academic journal regarding his

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1 criticisms of your 1995 paper; is that right?

2 A. Yes.

3 Q. And you responded to that in a journal article; correct?

4 A. Yes, I systematically refuted every single criticism he
5 made.

6 Q. If you can just answer the questions that I'm asking, I'd
7 appreciate it. That would require a yes or no answer, you
8 responded --

9 THE COURT: Mr. Showell, if you need instructions to
10 the jury that's my job.

11 MR. SHOWELL: My apologies, your Honor.

12 THE COURT: Next question.

13 BY MR. SHOWELL:

14 Q. Let me direct your attention to tab 4 of the binder,
15 which is a copy of one of Professor Hemingway's articles
16 criticizing your 1995 paper. And if you look at page 130,
17 which is the first page of that piece --

18 A. Are you sure you mean 130?

19 Q. I'm sorry; 1430.

20 A. The first page.

21 Q. Correct. Can you just read out loud the last two
22 sentences in that first paragraph?

23 A. The Kleck and Gertz (KG) paper has now been published, it
24 is clear however that the conclusions cannot be accepted as
25 valid.

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1 Q. Doesn't that say it's clear that its conclusions cannot
2 be accepted as --

3 A. Yes, that's right, its conclusions cannot be accepted as
4 valid. What did I say?

10:21 5 Q. Their conclusion. You're giving credit to your
6 co-author, I appreciate that.

7 I asked you about some aspects of Professor Hemingway's
8 criticism at your August 2nd deposition; is that right?

9 A. Could you repeat that please?

10:21 10 Q. Sure. I asked you about some of the aspects of Professor
11 Hemingway's criticisms at your August 2nd deposition; is that
12 correct?

13 A. Yes, you did.

14 Q. And among the criticisms that Hemingway levels is that
10:22 15 there's some basic methodological problems with your survey
16 techniques; is that correct?

17 A. That's what he claims, yes.

18 Q. And if you turn to page 1431 of the Hemingway piece, a
19 couple of paragraphs at the top of the page, and I won't read
10:22 20 both of those paragraphs, I'll try to summarize them. One of
21 the flaws --

22 THE COURT: I'm sorry; what page are you on?

23 MR. SHOWELL: Just turning the next page, your
24 Honor, 1431, tab 1, it's second page of tab 4, first two
10:22 25 paragraphs at the top of the page.

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1 Q. And in the first paragraph, one of the problems with your
2 1993 survey that Professor Hemingway identifies is something
3 called positive social desirability response; is that right?

4 A. He does refer to that, yes.

5 Q. And then in the next paragraph he talks about something
6 called the haystack problem, I'll call it the haystack
7 problem, and then -- I'll just read from that second
8 paragraph: However, combined with a second aspect of the
9 survey, the attempt to estimate a very rare event it -- I'm

10 sorry; I'll withdraw that.

11 I want to start at the top of that paragraph: Some
12 positive social desirability response bias by itself might not
13 lead to serious overestimation; however, combined with a
14 second aspect of the survey, the attempt to estimate a very
15 rare event it does. The search for a "needle in a haystack"
16 has major methodological dangers, especially where researchers
17 try to extrapolate the findings to society as a whole.

18 Do you recall that criticism leveled against your work
19 by Professor Hemingway?

20 A. Yes.

21 Q. And correct me if I'm wrong, but you contend that your
22 1993 survey reflects a nationally representative sample of
23 defensive gun uses in the United States; is that correct?

24 A. Yeah, I think that's one implication of interviewing a
25 nationally representative sample of U.S. adults, yeah.

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1 Q. But in your survey design you intentionally overweighted
2 responses from the south and west of the country; isn't that
3 right?

4 A. We did, we used standard research survey methods, and
5 that was compensated for by underweighting each of the cases
6 that had been given an extra large chance of being selected
7 into the sample in the first place.

8 Q. And isn't it true that gun ownership in the United States
9 tends to be more concentrated in the south and western parts
10 of the country?

11 A. Yes, that's why we deliberately and systematically
12 overrepresented people from those regions, because it would
13 yield a larger absolute number of people who had number one
14 owned guns and conceivably could use a gun for self-protection
15 but in fact did use a gun for self-protection; but as I say it
16 doesn't affect the estimate of frequency because we then
17 underweighted the cases we had over sampled.

18 MR. SHOWELL: Judge, I've been pretty indulgent but
19 I really think we need to have to witness instructed to answer
20 the questions yes or no.

21 THE COURT: The problem is your question didn't ask
22 for a yes or no; you have to him is that correct or is that
23 yes or no. So if you leave it kind of open-ended he's going
24 to speak in paragraphs. So you're going to have to just
25 rephrase how you're asking the questions.

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1 MR. SHOWELL: The question ended with isn't that
2 right.

3 THE COURT: Well, maybe that question, but I've been
4 listening to your questions, so -- but I will.

00:25 5 Professor, you're going to need to answer the
6 questions yes or no if asked in that framework; all right?

7 THE WITNESS: Yes, your Honor.

8 THE COURT: You may continue, Mr. Showell.

9 MR. SHOWELL: Thank you, your Honor.

00:26 10 BY MR. SHOWELL:

11 Q. And you also in your 1993 survey attempted to reach the
12 male head of household; isn't that correct?

13 A. Yes.

00:26 14 Q. Which I actually find kind of curious, because you said
15 in your deposition that it was generally your belief that
16 female respondents tended to answer survey questions more
17 honestly; isn't that right?

18 A. No, that's not exactly what I said. That's not the
19 reason I offered.

00:27 20 Q. Take a look at the deposition transcript that I've placed
21 in front of you, which is up on that rail there. And I'm just
22 going to read --

23 THE COURT: Tell us where you are.

00:27 24 MR. SHOWELL: We're at 199, and I'm going to pick up
25 with my question to the witness at line 19.

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1 THE COURT: Are you there, Professor?

2 THE WITNESS: Yes.

3 THE COURT: Okay.

4 Q. And I'm going to carry over on to 200. And I asked you:

5 Q. Okay, so let me just try and break this down then.

6 Are there other aspects of your survey which you don't
7 think produced credible results in your 1993 survey?

8 And your answer:

9 A. Yeah, as I stated in the original article I think
10 women are more willing to talk about controversial behaviors
11 in which they've engaged, in fact they're more honest as
12 survey respondents across the board than males are.

13 Do you recall giving that testimony?

14 A. Yes, but that passage has nothing to do with why we
15 deliberately overrepresent -- or try to overrepresent males.

16 MR. SHOWELL: Judge, that can be gotten into on
17 redirect, I really -- that question was asked in a fashion
18 that demanded a yes or no answer and I'm not getting yes or no
19 answers from this witness.

20 THE COURT: Go to your next question. I'm doing my
21 best. He said no, and then he indicated that the response
22 didn't relate to the prior question you asked.

23 Q. I'd like to direct your attention again to tab 4,
24 Professor Hemingway's article, this time at page 1434. One
25 aspect in which --

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1 A. Pardon me; which page?

2 Q. Yeah, it's 1434 at the top, the page number is in the
3 upper left-hand corner. Just let me know when you're there.

4 A. I'm there.

00:29

5 Q. One of the aspects in which Professor Hemingway
6 criticized your figures regarding estimated defensive gun uses
7 was because of something he referred to as missed
8 classification; is that correct?

9 A. Where on the page are you?

00:29

10 Q. I'm looking at the subhead 4 entitled Misclassification
11 in Surveys Generally.

12 A. Okay, yeah. My answer is yes.

13 Q. And in fact at the bottom of that page Professor
14 Hemingway states: All surveys have problems with accuracy;
15 incorrect classifications come from a wide variety of causes
16 including misunderstanding, miscoding, misremembering,
17 misinterpretation of events, mischief or down right mendacity.
18 Some percentage of answers to virtually all survey questions
19 are incorrect.

00:30

20 Do you see that?

21 A. Yes.

22 Q. And misclassification can be produced by false positive
23 responses; correct?

24 A. Yes.

00:30

25 Q. And I don't want to put too fine a point on it, but the

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1 bottom line for Professor Hemingway was that he believed
2 because of the problems with accurately estimating the
3 occurrence of exceedingly rare events, it was possible your
4 estimate of 2.5 million annual defensive gun uses was not a
5 reasonable estimate; is that correct?

6 A. Yes, that's what he concluded.

7 Q. Is it fair to say that also among the critics of your
8 1995 paper on defensive gun use were Philip Cook and Jens
9 Ludwig?

10 A. Yes.

11 Q. And their critical journal article appeared in the
12 Journal of Quantitative Criminology in 1998 with the title
13 Defensive Gun Uses-New Evidence From a National Survey, and
14 that's at tab 3 in your binder. And Cook and Ludwig mentioned
15 the National Crime Victimization Survey which is a nationally
16 representative in-person survey of 59,000 households conducted
17 by the Census Bureau for the U.S. Bureau of Justice
18 Statistics. And that's from page 112 in Cook and Ludwig.

19 And would you agree with that description of the
20 National Crime Victimization Survey as set forth in Cook and
21 Ludwig at 112?

22 A. No.

23 Q. Let me just read you from Cook and Ludwig. This is
24 starting on the second full paragraph -- I'm sorry. The
25 second paragraph at the top of 112: One data source for

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1 estimating the incidence of civilian DGU, is the National
2 Crime Victimization Survey (NCVS), a nationally representative
3 survey of 59,000 households conducted by the Census Bureau for
4 the U.S. Bureau of Justice Statistics.

00:32

5 Your own 1993 telephone survey had approximately 194
6 positive defensive gun use responses; is that correct?

7 A. Yes.

8 Q. And Cook and Ludwig note that the most recent NCVS survey
9 suggested annual defensive gun uses of 108,000; is that

00:33

10 correct?

11 A. Yes, that's what they say.

12 Q. Turn if you would to page 128 of the Cook and Ludwig
13 piece.

14 THE COURT: What page are you turning to?

00:33

15 MR. SHOWELL: 128 at the top left, your Honor.

16 Q. And in particular I'm going to direct your attention down
17 to the bottom of the page, Section 5.2, Conclusion. The

18 conclusion of the Cook and Ludwig piece states: "Survey

19 estimates for the annual number of DGUs have been offered as a

00:34

20 measure of the protective value of private gun ownership and

21 carrying, because several recent estimates from household

22 survey data suggested there are millions of DGUs each year.

23 Some have argued that widespread gun ownership and carrying

24 are effective in reducing injury from criminal victimization.

00:34

25 It is therefore important for public officials to be aware

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1 that estimates of the prevalence of DGU based on data of the
2 sort analyzed here, appear to suffer from a large positive
3 bias and greatly overstate the prevalence of DGU."

4 Did I read that correctly?

10:34 5 A. You read it correctly.

6 Q. And you would agree with me, would you not, that Philip
7 Cook is a source you have cited to support various
8 propositions in your own academic work?

9 A. Not on this one, but yeah, various things, yes.

10:35 10 Q. And you wouldn't have cited Philip Cook as a source if
11 you thought his scholarship was suspect, would you?

12 A. Not on any one particular issue, but if I find his
13 scholarship was suspect on a particular issue such as the
14 frequency of defensive gun use, I would not rely on his
15 evidence.

10:35

16 Q. And I asked you at your deposition whether you would
17 agree with me that there are academics and other professionals
18 who would seriously question your characterization of your
19 1993 survey as being the "best available evidence" of annual
20 rates of defensive gun use, didn't I?

10:35

21 A. I kind of lost it in the track of the question --

22 THE COURT: All right, so you have to rephrase.

23 MR. SHOWELL: I'll boil it down.

24 Q. We talked about some of the criticisms of your 1993
25 survey at your deposition; do you remember that general

10:35

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1 subject matter area?

2 A. Yes.

3 Q. And I suggested to you that there were several academics
4 who might seriously question your characterization of your own
5 1993 survey as being "the best available evidence" of annual
6 rates of defensive gun use, didn't I?

7 A. Yes.

8 Q. And you testified as to being aware of questioning by
9 David Hemenway and Philip Cook especially; isn't that correct?

10 A. Yes.

11 Q. And in fact you testified that, "I would say there are
12 pro-control fanatics like David Hemenway and Philip Cook who
13 would say that, but I would say there aren't any objective
14 scholars, objective and competent scholars who would say." Do
15 you recall giving that testimony?

16 A. I do.

17 Q. So, just so I'm clear about your testimony, is it your
18 testimony that Philip Cook at Duke is not an objective
19 competent scholar?

20 A. Competent when he wants to; objective, no.

21 Q. And we established that you cited Cook as a source for
22 your 2016 Justice Research and Policy paper marked as Joint
23 Exhibit X at tab 14 in your binder, you cite Cook at page 32.

24 THE COURT: What tab are you on?

25 MR. SHOWELL: 14, your Honor.

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1 Q. And you cite Philip Cook as supporting authority in the
2 middle of the first paragraph -- first complete paragraph at
3 the top of 32; is that correct?

4 A. Yes.

5 Q. So you're willing to cite Cook when he supports your
6 position, but he's an incompetent and biased scholar when he
7 disagrees with you; did I get that right?

8 A. No you did not.

9 Q. Okay. And perhaps he's especially more biased than
10 incompetent when he disagrees with you in the form of
11 criticizing scholarly work that you actually published in the
12 journal; is that right?

13 A. No.

14 Q. And you testified in your deposition that the follow-up
15 to your 1993 survey was taken away from you by the grants
16 administrator, and the data was handed over to Philip Cook and
17 Jens Ludwig who published the results without your name
18 appearing anywhere on the published work; isn't that right?

19 A. Yes.

20 Q. And you designed the survey instrument for that follow-up
21 and had done roughly 80 percent of the work when the project
22 was taken away from you; isn't that right?

23 A. Yes. Actually what I said was --

24 THE COURT: Wait; you answered the question.

25 THE WITNESS: Okay; sorry.

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1 THE COURT: Next question.

2 Q. And when I advised you at your deposition that other
3 professionals besides Professors Hemenway and Cook might
4 disagree with your assertion that your 1993 survey represented
5 the "best available evidence" about the annual rate of
6 defensive gun use and mentioned Ms. Allen, you testified,
7 "she's not a professional at all; in fact I know for a fact
8 she has a different opinion, stress had the word opinion, it's
9 not a professional or expert opinion, it's a personal opinion
10 based on nothing in the way of professional qualifications to
11 judge survey research."

12 Do you recall giving that testimony?

13 A. Yes, although it was Lucy Allen, not Liz Allen.

14 Q. I said Ms.

15 A. Ms.? Then I really misheard it. But I did say that
16 about Ms. Lucy Allen.

17 Q. Thank you. I just want to make sure I understand your
18 objection to Ms. Allen's professional credentials. Did you
19 review her C.V. in connection with your review of her
20 declaration in this case?

21 A. Yes.

22 Q. And you understood based on your review of that C.V. that
23 she has an MBA from Yale; correct?

24 A. Yes.

25 Q. And you also understood from that review that she has a

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1 Master's from Yale in economics; isn't that right?

2 A. Yes.

3 Q. And you understood from your review that she has an

4 M.Phil Degree from Yale also in economics; isn't that right?

00:40 5 A. Yes.

6 Q. And you also understood from that review that Ms. Allen

7 served two United States presidents; is that correct?

8 A. I don't recall that one way or another.

9 Q. I'll represent to you and it's displayed in Ms. Allen's

00:40 10 C.V. that she was a staff economist for George H. W. Bush's

11 Council of Economic Advisors, and I'll further represent to

12 you that she also served as a staff advisor to Bill Clinton's

13 Council of Economic Advisors. I can show you the C.V. if you

14 would like me to.

00:40 15 A. It doesn't matter, it's irrelevant, from my standpoint.

16 Q. And you have no idea, do you, when providing economic

17 advice to two United States presidents whether Ms. Allen had

18 any experience dealing with survey data?

19 A. I don't know one way or the other.

00:40 20 Q. And you were also aware, were you not, that Ms. Allen's

21 professional experience includes a "diagnostic survey for auto

22 parts manufacturer on growth obstacles", as well as

23 participating in the president's private security survey on

24 cost control?

00:41 25 A. Do I know that or remember that? No, but I'll take your

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1 word for it.

2 Q. Notwithstanding those qualifications, is it your
3 testimony that Ms. Allen is not -- it is your testimony that
4 Ms. Allen is "not a professional at all"; is that correct?

10:41 5 A. In that context meaning talking about defensive gun use
6 surveys, yeah, that's -- that would be my position, yes.

7 MR. SHOWELL: Judge, I really would like to get yes
8 or no answers to questions that call for yes or no --

9 THE COURT: I think he said yes at the end. I don't
10:41 10 understand what your problem is. I think the professor's
11 doing fine answering the questions.

12 Q. Professor Kleck, isn't it true that you were recently
13 able to obtain some 1996, '97 and '98 survey data relating to
14 gun usage from the Centers For Disease Control?

10:42 15 A. Yes, defensive gun use.

16 Q. And you actually produced a paper relating to that data;
17 isn't that right?

18 A. Yes.

19 Q. And you released that paper at least in an on-line
10:42 20 version; is that correct?

21 A. Yes, several versions.

22 Q. And I asked you about whether you had more recent
23 information relating to the numbers of annual defensive gun
24 uses than that reflected in paragraph 4 of your declaration at
10:42 25 your deposition; do you recall that?

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1 And just to orient you, paragraph 4 of your declaration
2 was based on the 1993 survey research and recounted an annual
3 defensive gun use estimate of 2.5 million. So if you need the
4 question again I'll give you the question again.

00:42

5 A. I think the answer was yes. Maybe I ought to hear it
6 again; I think the answer was yes.

7 Q. Just so there's no mistake I'll reask the question.

8 THE COURT: He can look at his declaration; right?

9 So why don't you go to paragraph 4.

00:43

10 MR. SHOWELL: But the declaration really doesn't go
11 to the nub of the question, Judge. What I was really focusing
12 on was that he had more recent information when I deposed him
13 than the 1993 data.

14 THE COURT: Then you better rephrase your question.

00:43

15 BY MR. SHOWELL:

16 Q. Would you agree with me that when I deposed you on August
17 2nd, 2018, two weeks ago that -- and I asked you whether you
18 had more recent information that I did ask you whether you had
19 more recent information about defensive gun uses than your
20 1993 survey results; do you recall me asking you that?

00:43

21 A. No, but, you know, I'll take your word for it. I really
22 don't recall.

23 Q. Take a look at page 293, line 13 through 294, line 14 in
24 your deposition transcript.

00:44

25 A. Which pages?

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1 Q. 293, starting at line 13 -- actually I'm going to back up
2 to give it some context. Just to give it appropriate context
3 I was asking you about testimony in Colorado in the
4 Hickenlooper matter where you had testified that your best
5 estimate of -- or guess I guess would be more accurate; of
6 annual defensive gun uses at that time was about 1.2 million.
7 Just to orient you, do you recall that as part of your
8 Colorado testimony?

9 A. Yes.

10 Q. And then you go on on page 293 and you talk about just
11 making sure that I was aware that it was in fact basically a
12 guess. So I'm going to read the question that I asked you to
13 and I'll read your answer as well starting at 292 at line 22.

14 Question: Just so we have a clear record, the question
15 that was asked of you in Colorado, and this is on page 937 of
16 the fifth day of trial testimony at line 19: Question "In
17 your opinion guns are used by civilians to defend themselves
18 in America more than one million times every year."

19 Answer: "Not every year, but I'd guess the average in
20 recent years would be in the vicinity of 1.2 million."

21 Do you recall that?

22 A. So this was in the Colorado case?

23 Q. That was in Colorado.

24 A. Yes.

25 Q. And then I followed that up by saying: Is there any

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1 reason to believe that your testimony in Colorado was
2 inaccurate. And you answered in the following respect: No, I
3 mean as long as you understand it was a guess, it was
4 accurate, I was accurately stating what my best guess would be
5 based on the information available. But it wasn't based on
6 the empirical evidence provided by a new survey which
7 obviously would have been preferable. And now that I have
8 that information I have drawn different conclusions about the
9 number of defensive gun uses, and they were based on actual
10 national surveys professionally conducted and surveying
11 probability samples of the U.S. population.

12 My next question to you was: And that information was
13 known to you prior to submitting your declaration in
14 connection with this case, with that case -- and then I said
15 with this case, isn't that right. And you said: No.

16 My next question: So you learned it between June 21st
17 of 2018 and August 2nd of 2018, you learned in the last six
18 weeks of the existence of those surveys.

19 And your answer was: It's quite possible it was just
20 in the last six weeks because I was doing the new review for
21 the purpose of the paper that's still under way that I was
22 still working on, so yeah, the surveys had been done earlier
23 than that, my awareness of the surveys was very recent.

24 Do you recall that testimony?

25 A. Yes.

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1 Q. So when I asked you whether you had gotten that recent
2 survey information prior to June 21, 2018 your answer was no;
3 is that correct?

4 A. That was my best recollection.

10:47 5 Q. And then a little bit later in your testimony you amended
6 your answer to state it was possible you had learned that
7 information in the last six weeks because you were still
8 working on the paper; is that right?

9 A. Yes, working on the CDC paper.

10:48 10 Q. I'd like to ask you to turn to tab 6 in the binder, which
11 I will represent to you is a blog post from an economics blog
12 that's kind of the equivalent of Law360 for lawyers. And the
13 blog that this post appeared on is called Marginal Revolution.

14 You will notice at the top of the page the publication
10:48 15 date for that blog post is April 23rd, 2018; is that right?

16 A. Yes.

17 Q. And that was approximately two months to the day before
18 you executed your declaration in this case; is that correct?

19 A. Yes.

10:49 20 Q. And that blog post mentions a new paper you apparently
21 had made available prior to April 23rd, 2018, which used CDC
22 collected 1996, 1997, and 1998 data to replicate your 1993
23 survey; isn't that right?

24 A. Yes.

10:49 25 Q. And if you turn to the bottom of the next page, the blog

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1 post notes that, "since defensive gun use --" actually it's
2 from a bottom of the page. The bottom of the first page to
3 the top of the next page. "Since defensive gun use is
4 relatively uncommon under any reasonable scenario, there are
5 many more opportunities to miscode in a way that inflates
6 defensive gun use than there are ways the miscode in a way
7 that deflates defensive gun use."

8 Is that correct?

9 A. Absolutely.

10 Q. And that's in essence the same misclassification scenario
11 that Hemenway had identified; is that fair to say?

12 A. No, not exactly.

13 Q. And the post also notes in the addendum section on page 2
14 that, "the paper --" presumably referring to your recent
15 paper "-- has since been taken down because in addition to the
16 issue of interpretation that I raised, the survey may not have
17 been national."

18 Isn't that correct?

19 A. No. Or partially correct.

20 Q. Did I misread that?

21 A. No, you're not misreading it -- I mean if you're asking
22 if you accurately read it, sure.

23 Q. I'm asking you whether that's what the blog post states.

24 THE COURT: You didn't ask that the first time.

25 So if that's the question, can you answer that?

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1 THE WITNESS: The question being is this what the
2 blog said?

3 Q. Yes.

4 A. Yeah, yes.

00:51 5 Q. So when you were deposed on August 2nd, two weeks ago,
6 not only did you not tell me that you had received that
7 additional data well before June 21st, 2018 and had not
8 included it in your declaration in this case, you also did not
9 tell me that you had relied on that data and posted a paper
00:51 10 analyzing it at least sometime before April 23rd, 2018; isn't
11 that correct?

12 A. No, that's completely incorrect.

13 Q. We can go back to your testimony, but I think we've kind
14 of covered that ground.

00:51 15 THE COURT: He answered the question, so go to your
16 next question, Mr. Showell.

17 Q. And it wouldn't have been too easy to forget a paper you
18 recently released which was clearly on your mind since you
19 testified that you were in the midst of revising it; isn't
00:52 20 that right?

21 A. Yes.

22 Q. I'd like to spend a little bit of time going back to your
23 declaration in Duncan, which is tab 2 in your binder. And in
24 particular I'd like to spend a little bit of time examining
00:52 25 some issues about your estimates of defensive gun use from

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1 1993 and as discussed in your supplemental declaration in
2 Duncan.

3 Based on the various academic critiques of your
4 estimates of annual defensive gun use in the United States,
5 defendants aren't willing to concede that your numbers are
6 correct. But for the sake of attempting to illuminate the
7 issues on this preliminary injunction application, I'd like
8 you to -- I'd like to walk you through some numerical analysis
9 based on your reply declaration in Duncan.

10 So starting in paragraph 11 of your Duncan reply,
11 that's on page 6 of tab 2, at line 7 you note that, Lucy Allen
12 found two incidents of defensive gun use in which a home
13 defender -- in which a defender fired more than 10 rounds; is
14 that correct?

15 A. Yes.

16 Q. And your reply in Duncan was in response to a declaration
17 that Ms. Allen had submitted in Duncan that's similar to the
18 one that she's offered the Court in this case; is that
19 correct?

20 A. Yes.

21 Q. And based on Ms. Allen's sample of the NRA Armed Citizen
22 Database reports of defensive gun uses, Ms. Allen concluded
23 that the data reflected a rate of 0.3 percent for defensive
24 gun uses in which more than 10 rounds were fired; is that
25 correct?

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1 A. Yes.

2 Q. Are you with me so far?

3 A. Yes.

4 Q. So let's fast forward the paragraph 16 of your Duncan

00:54 5 reply. That's on the next page. You posit --

6 A. Which paragraph?

7 Q. 16, line 16 on the following page, page 7.

8 A. Okay.

9 Q. You posit at least one million defensive gun uses

00:54 10 annually in that paragraph; isn't that correct?

11 A. Yes.

12 Q. And multiplying the estimated one million by Ms. Allen's

13 0.3 figure of defensive gun uses involving the firing of more

14 than 10 rounds, you contend that implies a rate of 3,000

00:55 15 annual defensive gun uses in the United States in which more

16 than 10 shots are fired, and that's in a country of roughly

17 326 million people; is that right?

18 A. Yes, under the assumptions that Allen's results were

19 valid.

00:55 20 Q. I understand that. That translates to a rate of roughly

21 8.2 defensive gun uses daily in the United States involving

22 large capacity magazines; is that right?

23 A. Yes. Well, approximately. I mean I haven't computed it,

24 but again it's in that ballpark.

00:55 25 Q. And you also note in paragraph 16 of your Duncan reply

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1 that, "no one really knows how many times LCMs are used
2 defensively." Isn't that right?

3 A. That's correct.

4 Q. And if no one really knows how many times LCMs -- and by
5 that I mean large capacity magazines -- are used defensively,
6 we certainly don't know how many times they're used in the
7 home; isn't that right?

8 A. Yes.

9 Q. And if we don't really know how many times LCMs are used
10 defensively in the home, we can't establish whether the
11 recently enacted New Jersey Statute A2761, will impose any
12 burden on home defense with firearms in New Jersey; isn't that
13 correct?

14 A. No.

15 Q. And why do you posit that that is not correct?

16 A. Well, beginning with the fact that I had that very
17 contingent acceptance of Lucy Allen results, I said, you know,
18 if they're valid. The only thing they really demonstrate is
19 that yes, there have been defensive gun uses involving more
20 than 10 rounds fired and thus presumably an LCM used. Which
21 means yeah, there are some people doing this, we just don't
22 know how many or how many in the home as you've inquired
23 about. But it's not zero; that's about all I'm confident in
24 saying.

25 Q. And would it be also fair to say that you have not

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1 conducted any independent research on the topic of the number
2 of defensive gun uses in the home involving an expenditure of
3 more than 10 rounds of ammunition?

4 A. Yes.

00:57

5 Q. And would it also be fair to say that the only such
6 instances of defensive gun use in the home involving an
7 expenditure of more than 10 rounds are the two instances that
8 Ms. Allen was able to identify?

9 A. No.

00:57

10 Q. What additional instances are you aware of?

11 A. You asked does that mean there are only two and no, it
12 only means there are at least two that we know of, but again
13 we don't know how many more there might be.

00:57

14 Q. Just so we're clear, you haven't done any research on the
15 subject; is that fair to say?

16 A. Correct, it's not research based, it's just a logical
17 point.

18 Q. You don't know of any such instances other than those
19 specifically identified by Ms. Allen; is that correct?

00:58

20 A. Yes.

21 Q. And you yourself have not conducted independent research
22 on the issue; isn't that right?

23 A. Yes.

00:58

24 Q. Okay. We're not done with the math just yet. Your
25 assumption of a million defensive gun uses in paragraph 16 in

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1 your Duncan reply, includes all defensive gun uses; isn't that
2 right?

3 A. Yes.

4 Q. It's not limited to the focus of this case, which is
5 defensive gun uses in the home; correct?

6 A. Yes.

7 Q. And the survey results from your 1995 paper suggest that
8 only 37.3 percent of defensive gun uses occur in the home; is
9 that correct? And if you need to refer to your paper, that's

10 tab 15, table 3, sub-4, page 185 at the top.

11 A. Yes.

12 Q. So it's only about 37.3 percent of defensive gun uses
13 that occur in the home; is that right?

14 A. Yes.

15 Q. And plaintiffs have said in their complaint and in these
16 proceedings in open court that the issues being decided here
17 concern defensive gun uses in the home; does that comport with
18 your understanding?

19 A. Yes.

20 Q. So if we really wanted to attempt to be more accurate
21 with our estimation in a way that's relevant to the Court's
22 analysis of the issues at hand, we would focus on defensive
23 gun uses in the home; correct?

24 A. You're getting into legal issues, but sounds plausible to
25 me.

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1 Q. And if we did that, based on your 1993 survey we'd be
2 looking at a figure of 373,000 approximately annual defensive
3 gun uses in the home, against which to multiply -- annual
4 defensive gun uses in the home would be 373,000. And then if
5 we were to take Ms. Allen's .3 percent figure to yield annual
6 defensive gun uses in which more than 10 shots were fired, we
7 would get approximately three defensive gun uses a day in a
8 country of 326 million people in which more than 10 shots are
9 fired. Isn't that right?

10 A. You mean starting with that hypothetical assumption that
11 there's a million total defensive gun uses which -- not
12 evidence based it's just an assumption, then the answer is
13 yes.

14 Q. Right. And it's an assumption that you made in your
15 reply declaration in Duncan.

16 A. Sure, sure.

17 Q. So that's approximately three defensive gun uses a day in
18 a country of 326 million people in which more than 10 shots
19 are fired; is that right? With all those underlying --

20 A. Under those assumptions, yes.

21 Q. Now, irrespective of whether we use an estimate of
22 defensive gun uses in which more than 10 shots were fired of
23 3,000, or a 119,000, which is what you get -- I'll represent
24 to you which is what you get when you multiply Ms. Allen's .3
25 times 373,000, regardless of which measure we use, your

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1 research over a 25 year investigation of defensive gun use
2 hasn't identified a single episode of defensive gun use in
3 which more than 10 rounds were fired in the home; is that
4 correct?

01:01 5 A. No.

6 Q. So tell me about all of those instances in the home that
7 your research identified in which more than 10 rounds were
8 fired in a defensive gun use situation.

9 A. I didn't look into that issue, so therefore I don't have
10 any evidence to bear on it one way or the other.

01:02 11 Q. So, anything that you said about that issue would not be
12 based on evidence; is that correct?

13 A. Certainly -- well, the only thing I've actually said
14 about it is that the number of defensive gun uses with over 10
01:02 15 rounds fired is not zero, it's more than zero and that it does
16 occur, and that's literally all I was -- I've actually
17 asserted it is factually true, but you asked me under various
18 hypothetical assumptions like there's only a million defensive
19 gun uses per year what would the numbers be, and I agreed with
01:02 20 what you stated.

21 Q. I'm going to ask you to take a look at tab 16 in your
22 binder. And tab 16 is a statistical tables of criminal
23 victimization in the United States for 2008; is that correct?

24 A. Table 16?

01:03 25 Q. No, no. Tab 16.

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1 A. Oh, tab 16. And which table?

2 Q. We haven't gotten there quite yet.

3 A. Okay.

4 Q. That appears to be a statistical table for crime

01:03 5 victimization in the United States, 2008; correct?

6 A. Yes.

7 Q. And that's a U.S. Department of Justice publication; is

8 that right?

9 A. Yes.

01:03 10 Q. And you've cited this same document in your declaration

11 in this case at paragraph 13 and footnote 2; is that right?

12 A. In my declaration?

13 Q. Yeah. We can go to tab 1, paragraph 13, footnote 2. I

14 think you cite it in the body of the text in paragraph 13 as

01:04 15 well as referencing it in footnote 2. Page 7 of your

16 declaration, paragraph 13, and I'll just read it to you to

17 save time --

18 THE COURT: Well, wait; you should wait until he

19 gets there.

01:04 20 THE WITNESS: I got it.

21 THE COURT: You may read if you wish, Mr. Showell.

22 MR. SHOWELL: I don't need to, I just to -- I want

23 him to acknowledge that he's relied on this same document in

24 connection with his declaration in this case.

01:04 25 BY MR. SHOWELL:

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1 Q. Would it be fair to say that you rely on this document?

2 A. Yes.

3 Q. In your declaration?

4 A. Yes.

01:04

5 Q. And you considered the crime victimization statistics

6 represented by the document at tab 16 to be generally

7 reliable; is that correct?

8 A. They represent sort of lower limit estimates.

9 Q. That wasn't my question. My question was do you consider

01:04

10 them to be generally reliable?

11 A. In that case I don't know how to answer the question.

12 THE COURT: I couldn't hear your answer.

13 THE WITNESS: I said in that case I don't know how

14 to answer the question.

01:05

15 THE COURT: You may rephrase.

16 Q. Reliable or not, you're confident enough in them to rely

17 on them for your own work in presenting issues to this Court;

18 is that fair to say?

19 A. I rely on them as being good for minimum baseline

01:05

20 estimates, they're at least this much, in other words. And

21 for that purpose, yes, I do think they're reliable.

22 Q. And I'll represent to you that the sample size for the

23 data in the crime victimization statistics was 67,090 in 2008

24 based on an entry toward the end of the document. If you'd

01:05

25 like to confirm that for yourself we can flip to it, but I'll

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1 represent to you that that's what the document says as far as
2 sample size for 2008 is concerned.

3 And I would ordinarily refer you to a specific page,
4 but the problem with that document is it's pretty big and the
5 pages aren't numbered.

6 THE COURT: So is that a question?

7 Q. Does that sound like a reasonable estimate of sample size
8 for this -- let's do this a little differently. Start at the
9 back of the document.

10 A. Maybe I can shortcut it; the samples are very large, yes.
11 I don't know if it's 67,000, but yeah, they're very large.

12 Q. About 10 pages in from the back there's a table that
13 lists what the sample sizes are and it says number of persons
14 interviewed for 2008; it's very last line at the bottom of the
15 table, it says 67,090.

16 Have you found that yet, or no?

17 A. Yes.

18 Q. So would you agree with me that the sample size for 2008
19 says 67,090?

20 A. Yes.

21 Q. In contrast your 1993 survey, the positive responses on
22 defensive gun use was what, 194 individuals?

23 A. How many said they had an defensive gun use and that we
24 regarded as legitimate, they really were defensive gun uses?

25 Yes, 194. I thought you were asking about the number we

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1 asked, the sample size analogous to what we're talking about
2 here regarding the victimization surveys.

3 Q. No. But even so, the sample size there was 4,977; is
4 that right?

01:07 5 A. Say again, say the number again?

6 Q. 4,977 total sample population.

7 A. That's correct.

8 Q. I'm going to ask you to turn to table 70 in the crime
9 victimization statistics. Again the pages aren't numbered so
01:08 10 it may take you while to get there. If it helps the
11 orientation of the table is vertical, it looks like this
12 (indicating) as opposed to being set up like that
13 (indicating).

14 THE COURT: What table are we looking at?

01:08 15 MR. SHOWELL: We're looking at table 70, seven zero,
16 your Honor.

17 We good to go, Judge?

18 THE COURT: I've got it. Do you have it, Professor?

19 THE WITNESS: Yes, I do.

01:08 20 BY MR. SHOWELL:

21 Q. So directing your attention to table 70 in the crime
22 victimization statistics, it's labeled at the top Personal
23 Crimes of Violence; do you see that?

24 A. Yes.

01:09 25 Q. And that table purports the show percentage figures for

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1 different types of defensive actions taken by victims of
2 personal crimes of violence; is that your understanding?

3 A. That is.

4 Q. In the top -- in the top line of that table, one of the
5 options for a defensive action is "attacked offender with a
6 weapon", and that would appear to be just a generic weapon
7 which would include a firearm, but it's not exclusive to a
8 firearm; would you agree with me?

9 A. Yes.

10 Q. And that line across the board reflects a percentage rate
11 of weapon use that is not higher than 4.3 percent in any given
12 category; is that right?

13 A. Which row are you talking about now?

14 Q. Very top line, attacked offender with a weapon.

15 A. Okay.

16 Q. It has crimes of violence 1.3, et cetera, et cetera, and
17 the highest single number is robbery with injury at 4.3
18 percent. Do you see that?

19 A. Yes.

20 Q. And if you just take your finger and you scan it all the
21 way across that one line, that 4.3 percent is the highest
22 number; is that right?

23 A. Yes.

24 Q. Notwithstanding the rates there, what I'm really

25 interested is in the asterisk which appears after the rates in

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1 the first category, after all but the first category of
2 numbers, and the asterisk has a code at the bottom of the page
3 stating, "estimate is based on 10 or fewer sample cases". Is
4 that correct?

01:10 5 A. Yes.

6 Q. And even if we assume that every one of those "attacked
7 offender with a weapon" responses involved a firearm, and
8 further that every use of a firearm involved the discharge of
9 excess of 10 rounds of ammunition, this table suggests no more
01:11 10 than 10 or fewer such incidents throughout an entire year in
11 each of the 10 listed categories; isn't that right?

12 A. In this survey, yes.

13 Q. And I'll concede that the data in table 7 here for
14 personal crimes of violence and don't reflect property crimes.
01:11 15 We spoke a little while ago about academics working in the gun
16 policy area and discussed your opinion of some researchers
17 working in that area; do you recall that general area of
18 testimony?

19 A. Yes.

01:11 20 Q. And one researcher that we didn't speak about was Michael
21 Siegel at Boston University; isn't that right?

22 A. I don't recall one way or another whether we discussed
23 Mr. Siegel.

24 Q. I'll simplify things; let's discuss Professor Siegel now.

01:11 25 A. Okay.

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1 Q. Professor Siegel did an interview with CNN in which he
2 appeared to discuss some forthcoming research and we spoke
3 about that at your deposition; do you recall that?

4 A. I think so. So it was off of a CNN website, that one?

01:12 5 Q. That's exactly right, very good memory. And that CNN
6 piece is at tab 13 in your binder. It's actually -- the
7 reproduction is very small, so I've asked Deputy Attorney
8 General Lucas to blow that up on the screen for anybody who
9 might have trouble following along on the tabbed version.

01:12 10 And if you look at the Siegel piece on the front page,
11 after the first full line following the CNN notification,
12 they're quoting Professor Siegel and he says "whether a state
13 has a large capacity ammunition magazine ban is the single
14 best predictor of the mass shooting rate in that state." And
01:13 15 he goes on to say: These states are associated with a 63
16 percent lower rate of mass shootings -- or CNN goes on to
17 state according to Professor Siegel's analysis.

18 Did I read that correctly?

19 A. You did.

01:13 20 Q. And in your deposition my recollection is that you were
21 pretty dismissive of Professor Siegel's work if my memory
22 serves; is that correct?

23 A. Yes, it is.

24 Q. And in fact it was your opinion that Professor Siegel "in
01:13 25 particular is especially ignorant about the correlates of

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1 crime." Do you recall testifying to that effect in your
2 deposition?

3 A. Yes, I do.

4 Q. Professor Kleck, you own semi-automatic firearms

01:14 5 yourself; is that correct? Or a semi-automatic firearm?

6 A. Yes, one.

7 Q. And I believe on deposition you testified that you owned
8 a Glock semi-automatic handgun; is that right?

9 A. Yes.

01:14 10 Q. And in fact you've participated in action shooting
11 competition events over the years; is that right?

12 A. Yes.

13 Q. And you also testified at your deposition in this case
14 that you fired virtually every type of gun there is; isn't
01:14 15 that correct?

16 A. I think I said like every major type or something like
17 that, meaning broad categories.

18 Q. You did say every major type, I was about get to that. I
19 think the exact quote is, "I have fired every major type of
01:14 20 firearm there is, semi-automatic pistols, revolvers, rifles,
21 pump shotguns, semi-automatic shotguns." And that was
22 actually the quote from your deposition testimony in the Kolbe
23 case in Maryland.

24 You also testified at your deposition that you had

01:14 25 never fired any of the weapons that you testified about in

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1 self-defense; is that correct?

2 A. That's correct.

3 Q. And it's fair to say, is it not, that your testimony was
4 that you had fired those weapons as part of your academic
5 research.

6 A. Yes. Well, let me back up; and also just for fun in some
7 cases, so not strictly research.

8 Q. Thank you for the clarification.

9 A. Okay.

10 Q. And is it fair to say that when I took your deposition in
11 this case you couldn't really identify the purpose for which
12 you currently owned firearms that you do own; isn't that
13 right?

14 A. Yes.

15 Q. Would it be fair to say that you personally do not
16 currently own a firearm for personal protection?

17 A. I'd have a hard time answering that yes or no. I mean
18 it's available, it's conceivable I could use it for that
19 purpose; so in that sense the answer would be yeah, I got it
20 for self-defense, but I don't -- I don't appreciate that as a
21 realistic possibility for me.

22 Q. When I asked you at your deposition whether you could
23 identify the purpose for which you currently owned firearms,
24 you told me that you could not; is that correct?

25 A. Yes, I did say that.

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1 Q. You also testified that you were not personally
2 acquainted with anyone who had ever fired a firearm in his or
3 her home for self-defense; isn't that correct?

4 A. Yes.

01:16

5 Q. I think we've established quite thoroughly that during
6 your academic career you've conducted research on defensive
7 gun use; isn't that fair to say?

8 A. Yes.

01:17

9 Q. And in that research you've defined defensive gun use to
10 include simply brandishing a weapon; is that correct?

11 A. If it involves a threat, yes.

12 Q. And by brandishing you mean simply displaying a firearm
13 but not actually firing it; is that right?

14 A. If that's all that's involved just brandishing, yes.

01:17

15 Q. And according to your definition of defensive gun use,
16 that I would successfully defend myself with a firearm if I
17 simply waved it at a home intruder, than turn tail and ran off
18 without me having to fire a single shot; is that correct?

19 A. Yes.

01:17

20 Q. And from your 1993 survey research you believed you were
21 able to estimate the frequency of annual defensive gun uses
22 that consisted of brandishing alone; is that correct?

23 A. Yes, but again, a minimum baseline figure.

01:18

24 Q. And based on the 1993 survey that was the basis for your
25 1995 article with Professor Gertz, you concluded that 75.7

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1 percent of successful defensive gun uses involved simply
2 brandishing a firearm; isn't that right?

3 A. I don't recall qualifying it by successful, I think I
4 just said defensive gun use period however they turned out.

01:18 5 Q. I stand corrected. 75.7 percent of defensive gun uses
6 involved simply brandishing; is that correct?

7 A. No, not as you phrased it, it's not simply brandishing,
8 it could be brandishing plus other things, or it could be only
9 brandishing.

01:18 10 Q. Let's take a look at tab 15, table 3. Tab 15 is your
11 1995 article Armed Resistance to Crime - The Prevalence And
12 Nature of Self-Defense With a Gun, co-authored with the Mark
13 Gertz; is that right?

14 A. Yes.

01:19 15 Q. Table 3 is toward the back I believe. Table 3 is at page
16 185 in the top right corner. Let me know when --

17 A. I'm there.

18 MR. SHOWELL: Your Honor?

19 THE COURT: I'm there.

01:19 20 Q. And table 3 is the nature of defensive gun use incidents;
21 is that correct?

22 A. Yes.

23 Q. And under sub-A what the defender did with the gun, the
24 first line is brandished or showed gun. And if you read out
01:19 25 to the column on the right, there's a number there and that's

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1 75.7 percent; is that right?

2 A. That's correct.

3 Q. And there's no footnote symbol after the brandished or

4 showed gun or after that number 75.7 percent that says

01:20 5 anything other than -- that says anything about explaining

6 it's brandishing plus or brandishing and some other

7 affirmative action; isn't that correct?

8 A. Yes, because it was explained in the text.

9 Q. So is it your testimony that according to your 1993

01:20 10 research that three-quarters of defensive gun uses -- in

11 three-quarters of cases of successful defensive gun uses no

12 shots are fired?

13 A. No.

14 Q. I'm sorry; withdraw the qualifier successful. Is it your

01:20 15 testimony that according to table 3 in your 1995 article, that

16 approximately three-quarters of all defensive gun uses involve

17 merely brandishing a weapon?

18 A. No.

19 Q. What did I get wrong about that, Professor?

01:21 20 A. If I understand your term merely to mean only and they

21 didn't do anything else with the gun, so 75.7 percent includes

22 the ones in which they only brandished or showed the gun, plus

23 others where they brandished or showed the gun but they did

24 something additional like threatening -- like pointing the gun

01:21 25 at the offender, like firing at the offender and possibly even

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1 wounding the offender. So some subset of that involves other
2 stuff. And as I said that was explained clearly in the text.

3 Q. Well, did you attempt to determine how many of those
4 instances of defensive gun use subsumed in the brandishing
5 category did not involve actually firing a gun? And I think
6 we can deduce that from the table, but -- but I may be wrong.

7 A. That's right, we can deduce it from the table.

8 Q. Because of that 75.7 percent of brandishing, further down
9 in the table you have a column, Fired Gun Including Warning
10 Shots, and that's 23.9 percent. So doing a little quick math
11 here, we're talking about approximately 50 percent of
12 instances in which a gun was brandished but no shots were
13 fired; is that -- am I correctly deducing that from the table?

14 A. No.

15 Q. Can you tell me if you were able to determine the number
16 of instances of defensive gun use in which no shots were
17 fired?

18 A. Well, if 23.9 percent of all of the incidents involved a
19 gun being fired including warning shots, and 75 percent
20 involved --

21 Q. And 75 -- it's 23 percent of 75 --

22 A. Yes.

23 THE COURT: Mr. Showell, how do you interrupt him in
24 the middle of an answer?

25 MR. SHOWELL: My apologies because I had a flash of

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1 recognition.

2 THE COURT: Well, please don't do that again.

3 So you may answer that question again because I lost
4 where you were.

01:23 5 THE WITNESS: Thank you, your Honor; I'll start
6 again. If 23.9 percent of all defensive gun uses involve the
7 defender firing the gun including warning shots, and 75.7
8 percent brandished or showed the gun and possibly did other
9 things, then it's about one-third of that 75 percent that
01:23 10 fired the gun. So one-third also fired the gun and two-thirds
11 did not.

12 BY MR. SHOWELL:

13 Q. Got it. So --

14 A. And you said 50 percent of something like that.

01:23 15 Q. Right. So doing a little quick math we're talking about
16 roughly 20 percent of incidents in which -- and I'm rounding
17 the 75 up to 80 and taking the 23 as 25. So roughly 20
18 percent, quick math, are situations where no shots were fired;
19 is that correct?

01:24 20 A. No. It's about one-third.

21 Q. So 30 percent of the time no shots are fired.

22 A. Sure, around there, yeah.

23 Q. So would you agree with me that in those instances where
24 no shots are fired, the restriction of A2761 will have no
01:24 25 effect on an individual's ability to defend themselves with a

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1 firearm?

2 A. No.

3 Q. So if I can't use more than 10 bullets in a situation

4 where I don't need to fire a gun, A2761 is having a

5 detrimental effect on me; is that your testimony?

6 A. Yes, because some of the effect is deterrence and it's

7 whatever the offender perceives; if he perceives you have the

8 ability to fire large numbers of rounds, that has its own

9 effect apart from the number of rounds you would actually

10 fire.

11 Q. But the defender's (sic) perception could be based on

12 unloaded weapons; isn't that correct?

13 A. Could be. Yes, could be.

14 THE COURT: So, Professor, you call it the nature of

15 defensive gun use; do you have a definition for gun?

16 THE WITNESS: Oh, no, I don't think I define gun.

17 THE COURT: So does that include long weapons?

18 THE WITNESS: Oh, yeah, definitely.

19 BY MR. SHOWELL:

20 Q. Based on your 1993 survey results, you indicated that a

21 weapon is involved in defensive gun uses, only about 40

22 percent involve semi-automatic pistols; is that right?

23 A. Yes.

24 Q. We're down on the bottom in category H.

25 A. Yes.

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1 Q. And the combined majority of firearms used in your survey
2 were revolvers and shotguns which together aggregate about
3 52.4 percent of firearms used; isn't that correct?

4 A. Which ones are you adding together?

01:26 5 Q. I was adding revolvers and shotguns and I think my math
6 takes us to 52.4 percent.

7 A. Revolvers and shotguns; yes, 52.4 percent.

8 Q. Are you aware of the existence of any shotgun magazines
9 that contain more than 10 rounds?

01:26 10 A. I'm not an expert on the technology of firearms, but I
11 think there was something called the Street Sweeper; I don't
12 know if you call it a magazine, it's not -- I don't think it
13 was a detachable magazine but yeah, it had a magazine that
14 held a large number of rounds in a shotgun.

01:27 15 Q. I'll represent to you that New Jersey Statute A2861
16 specifically references the Street Sweeper and it's a banned
17 weapon.

18 A. Yeah.

19 THE COURT: So is that a shotgun?

01:27 20 MR. SHOWELL: Yes.

21 Q. So a magazine size limitation of A2761 would have no
22 effect on the majority of weapons that you found were used
23 in self-defense in your 1993 survey; is that correct?

24 A. No, not exactly, because it wouldn't be the same today.

01:27 25 I mean, you know, after New Jersey has passed a law the

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1 distribution of firearms is quite different.

2 Q. My question was specifically directed to your 1993

3 survey.

4 A. If nothing had changed since 1993 then my answer would be

5 yes.

6 Q. You're familiar with Lucy Allen's expert declaration in

7 this case that was submitted by the defendants; is that right?

8 A. Yes.

9 Q. And Ms. Allen did an analysis of defensive gun use in the

10 home where shots were actually fired; is that your

11 understanding? Based on the NRA Armed Citizen Database?

12 A. I don't recall it being limited to ones in the home, but

13 certainly she did an analysis of defensive gun uses.

14 MR. SHOWELL: Bear with me for a minute, your Honor

15 I think via the wonders of modern technology, we're

16 going to put Ms. Allen's declaration up on the screen.

17 Q. And I'd like to direct your attention to the table on

18 page 6 of Ms. Allen's declaration. And if you look at the top

19 line in that table, underneath the title captioned to the

20 left, it says Average Number of Shots Fired; and there are two

21 columns, the left says Overall, and the right column says

22 Incidents in the Home.

23 Having looked at this, does that refresh your

24 recollection as to whether Ms. Allen did an analysis of the

25 number of shots fired in the home in self-defense?

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1 A. Yes, she didn't limit herself to that, but she certainly
2 did that among other things.

3 Q. And that analysis as reflected in the table on page 6 of
4 Ms. Allen's report, which follows paragraph 10, indicated that
5 the average number of shots fired in the home in self-defense
6 was 2.1 based on her analysis of the NRA Armed Citizen
7 Database; is that correct?

8 A. Yes.

9 Q. And Ms. Allen's results of 2.1 shots fired involving
10 incidents in the home was corroborated by her subsequent
11 analysis of the Dow Jones Factiva Database; is that right?

12 A. I wouldn't say corroborated because they're basically two
13 entirely different sets of events. So the one doesn't
14 corroborate anything about the first one.

15 Q. Well, would you agree with me that her results from one
16 analysis are consistent with the results from her additional
17 analysis?

18 A. Yeah, I suppose. I mean you can put it that way, but
19 really I'd say it's more accurate to say they're more or less
20 unrelated.

21 Q. And based on her Factiva data analysis there were an
22 average number of 2.34 shots fired in the home; is that
23 correct? It's about a third of the way down on the page in
24 the right-hand column.

25 A. Yes, according to that source.

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1 Q. I apologize if we've covered this already, but you
2 haven't performed any studies in connection with this case to
3 determine the number of shots fired in the home in
4 self-defense; is that right?

01:32 5 A. Yes.

6 Q. So you have no basis in empirical fact to dispute Ms.
7 Allen's findings about the number of shots fired in home
8 defense situations; is that right?

9 A. I have no evidence bearing on it one way or the other.

01:33 10 Q. And if home defenders rarely fire more than three shots
11 in those instances in which shots are actually fired, then the
12 inability to fire an additional seven rounds arising from
13 compliance with A2761's magazine capacity doesn't impose a
14 burden on self-defense in the home; is that correct?

01:33 15 A. No.

16 Q. And I know I asked you you haven't done any personal
17 research, but you haven't also identified any studies in
18 connection with this case in which more than three rounds were
19 discharged by an individual defending their home with a
01:34 20 firearm; is that correct?

21 A. I don't understand the question.

22 (Question read back by the reporter.)

23 A. I guess I still don't understand the question. Are you
24 asking --

01:34 25 THE COURT: All right. Let him rephrase it.

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1 Q. Let me break it down for you. You haven't investigated
2 the number of shots that an individual defending a home might
3 fire when they're using a firearm to defend the home; is that
4 right?

01:35 5 A. Yes.

6 Q. And you haven't identified any studies conducted by
7 others that looked at that issue; is that fair to say?

8 A. Yes. Other than the Lucy Allen one.

01:35 9 Q. Correct. In your declaration in this case which I
10 believe is tab 1 of the binder, you indicate in about four
11 separate spots that the time required for an experienced
12 shooter to change a large capacity magazine in a
13 semi-automatic firearm is two to four seconds; do I have that
14 right?

01:35 15 A. No.

16 Q. In what respect do I have that incorrect?

17 A. I did not limit that two to four second estimate to
18 experienced shooters.

19 (Brief pause.)

01:37 20 Q. Perhaps you made that qualification in your article.

21 Let's take a look at tab 14. Are you at your article?

22 A. Yes.

23 Q. Tab 14 is your 2016 Justice Research and Policy piece,

24 Large Capacity Magazines and the Casualty Counts in Mass

01:38 25 Shootings - The Plausibility of Linkages. Is that correct?

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1 A. Yes.

2 Q. I'm going to direct your attention to page 30 of that
3 publication, and the second to last paragraph at the bottom
4 beginning with the second sentence: Skilled shooters can
5 change detachable magazines in two seconds or less, and even
6 relatively unskilled persons can with minimal practice do it
7 so in four seconds. And then you reference a YouTube video
8 for a demonstration of that fact, which shows a two-second
9 magazine change by an experienced shooter. Is that correct?

10 A. Yes, that's correct.

11 THE COURT: Can you just point out where on the page
12 you see that?

13 MR. SHOWELL: Yeah, down at the bottom of 30, it's
14 the second paragraph from the bottom of the page, the
15 paragraph that starts, it is not however self-evident.

16 THE COURT: Okay, got it.

17 MR. SHOWELL: And then we're picking up with the
18 second sentence there.

19 THE COURT: Got it.

20 MR. SHOWELL: Through the YouTube URL, and beyond.

21 BY MR. SHOWELL:

22 Q. When you cite this two to four-second magazine change
23 figure in your declaration, you do it without any supporting
24 citation; is that correct?

25 A. I'm sorry; could you repeat the question?

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01:39 1 Q. Sure. You cited this two to four-second figure a few
2 times, I think it's four separate instances in your
3 declaration, and I can point out each one if you like. But as
4 I read your declaration I don't see any reference to any kind
5 of proof that establishes that two to four-second window in
6 your declaration; is that a fair statement?

01:40 7 A. Yes, that I didn't repeat the same citations four
8 citations again and again with each of those four mentions of
9 the assertion. As you pointed out that's one of the instances
10 in which I cited supporting evidence, but I did not repeat the
11 citations between and again. That's not customary in social
12 science research.

01:40 13 Q. I guess my point is that I don't see the citation
14 appearing anywhere in your declaration. I'm not talking about
15 your scholarly article now, I'm talking about your
16 declaration.

17 A. That's possible, I mean, you know, because I indirectly
18 cite it by citing the academic article, which in turn has the
19 supporting citations.

01:41 20 Q. And in your Justice Research and Policy article, Joint
21 Exhibit 10 that we just looked at on page 30, when you cite
22 that two to four-second magazine change interval, you don't
23 cite any scholarly research as the basis for that source, do
24 you.

01:41 25 A. That's correct.

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1 Q. You cite a YouTube demonstration by someone referred to
2 as an experienced shooter; isn't that right?

3 A. Yes.

4 Q. But you did not mention, did you, that the experienced
5 shooter is Doug Koenig.

6 A. I'm not even sure I was aware of that.

7 Q. I'm going to ask Deputy Attorney General Lucas to play
8 the YouTube video you cite as supporting authority in Joint
9 Exhibit 10. That's tab 14 at page 30.

10 (Https---www.YouTube.com-watch-v=ZRCjY-GtROY)

11 BY MR. SHOWELL:

12 Q. And I'm going to show you something, Professor Kleck.

13 MR. SHOWELL: I think it's going to be most
14 effective if I can walk up to the screen and point it out your
15 Honor. Without tripping myself.

16 Q. Professor Kleck, do you see this logo at the bottom of
17 the video screen here (indicating)?

18 A. Yes.

19 Q. Do you recognize that logo?

20 A. Yes.

21 Q. Can you see it from there?

22 A. National Shooting Sports Foundation.

23 Q. Okay. And it's my understanding that the National
24 Shooting Sports Foundation sponsored that training video. Do
25 you know who the National Shooting Sports Foundation is?

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1 A. They're an industry group, firearms industry group.

2 Q. Now, we just saw that video and it appeared to me as
3 though Mr. Koenig was providing his instruction under pretty
4 much clinical range conditions; isn't that correct?

01:48 5 A. Yes.

6 Q. And he didn't just describe himself as a skilled shooter,
7 he said in the video that he was a professional shooter; isn't
8 that correct?

9 A. Yes.

01:49 10 Q. You would agree with me, would you not, he was alone on
11 the range not surrounded by other people?

12 A. Yes.

13 Q. And it was broad daylight; is that correct?

14 A. Yes.

01:49 15 Q. And I don't know if you noticed it, Professor Kleck, but
16 he did mention that he had a special belt on for holding his
17 magazines so that they were immediately accessible; isn't that
18 correct?

19 A. He did.

01:49 20 Q. Would you agree with me that it would likely have taken
21 Mr. Koenig longer to reload if he had to dig magazines out of
22 a pocket of a pair of jeans?

23 A. Possibly, depending on how they're positioned; but if it
24 was sticking out and more or less in the same position, but

01:49 25 out of a jeans pocket rather than a holster like that it would

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1 make any difference.

2 Q. So what if it's jammed down deep in a jeans pocket?

3 A. Then it would make a difference.

4 Q. And what if Mr. Koenig had to have retrieved the magazine

01:49 5 from a backpack, for example, would that -- might that have

6 increased his time between shots?

7 A. Probably.

8 Q. Even for an experienced shooter like him?

9 A. Probably.

01:50 10 Q. And did you notice -- did you mention -- withdraw.

11 Did you happen to hear Mr. Koenig say that it was

12 important to practice because you could fumble a magazine

13 while you're changing or words to that effect?

14 A. No, I only recall him saying the first part of it, that

01:50 15 you had to practice.

16 Q. We could we play --

17 THE COURT: I listened to the video, so I have my

18 recollection of what it said.

19 Q. And I'd just like to take a minute or two exploring

01:50 20 exactly who Mr. Koenig is. And I'm going to the ask Deputy

21 Attorney General Lucas to pull up Mr. Koenig's personal

22 website. And I believe there are items relating to Mr. Koenig

23 at tabs 8 through 11 in the notebook.

24 MR. THOMPSON: Objection to relevance, your Honor.

01:51 25 We'll stipulate that he's a professional.

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1 MR. SHOWELL: He's not just a professional, your
2 Honor, he's a world champion shooter and I was going to use
3 this to establish that. He's an 18 time world champion
4 professional speed shooter according to his website.

01:51 5 THE COURT: So what's the relevance of that?

6 MR. SHOWELL: Well, the relevance of that --

7 THE COURT: Just into the speed in which he changed
8 the magazine?

9 MR. SHOWELL: The relevance, your Honor, is that
01:51 10 Professor Kleck referring to defensive Doug Koenig as a
11 "skilled shooter", is a little bit like saying Michael Jordan
12 played a little bit of basketball.

13 THE COURT: So you're impeaching his credibility, is
14 that what you're doing? I'm trying to figure this out.

01:52 15 MR. SHOWELL: I think it's somewhat less than
16 forthright to suggest that an average shooter could shoot
17 in -- could change a magazine in two to four seconds.

18 THE COURT: All right.

19 MR. THOMPSON: Objection; that mischaracterizes the
01:52 20 testimony, it says a relatively unskilled person can do it in
21 four seconds.

22 THE COURT: So --

23 MR. SHOWELL: Your Honor, I think the point --

24 THE COURT: Do you want to put this document into
01:52 25 evidence?

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1 Mr. Thompson, you don't have any objections? I can
2 look at --

3 MR. THOMPSON: I don't have any objection, your
4 Honor.

01:52 5 THE COURT: All right. So you can put it into
6 evidence and then I can make my own conclusion as to it.

7 MR. SHOWELL: Thank you, your Honor.

8 THE COURT: So how are you going to mark that?

9 MR. SHOWELL: I think we'll have to get hard copies
01:53 10 to the Court. There are some in the binder, but I don't think
11 they show everything that we would like. I think we'll
12 probably have to get -- we'll probably have to get a thumb
13 drive to the Court.

14 THE COURT: All right. So what are you going to
01:53 15 mark it as, just so we have a reference to it?

16 MR. SHOWELL: I think we're at DX-118. I think we
17 marked 115, 116 and 117 this morning.

18 THE COURT: So DX-118 will be a thumb drive
19 containing I guess the resume of Mr. Koenig.

01:53 20 MR. SHOWELL: Well, there are actually a couple
21 things I'd like to include, including his sponsorship by the
22 National Shooting Sports Foundation, he's got a tab on there
23 for sponsorships, and his awards that show he's a professional
24 champion -- world champion speed shooter.

01:54 25 THE COURT: Well, you'll include whatever's about

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1 Koenig then.

2 MR. SHOWELL: It's actually clicking through some
3 additional tabs that show him with a bazillion trophies and
4 things like that.

01:54 5 THE COURT: All right. Let's proceed. So that will
6 be admitted, but it will be under DX --

7 MR. SHOWELL: 118.

8 THE COURT: 118.

9 MR. SHOWELL: Thank you, your Honor.

01:54 10 (Defendants' Exhibit 118 was marked into evidence.)

11 BY MR. SHOWELL:

12 Q. Do you recall me asking you at your deposition where you
13 derived that two to four-second figure for magazine changes
14 that you had cited in your declaration came from?

01:54 15 A. Yes.

16 Q. And do you remember testifying that it was based on two
17 things: Your review of YouTube videos, including but not
18 limited to Mr. Koenig's demonstration; and a practical
19 demonstration that you conducted at a range with your own
01:54 20 personal firearm in St. Augustine, Florida with your friend
21 Jim Stevenson. Do you recall that?

22 A. Did you say Joe Stevenson?

23 Q. I said Jim, but if it should have been Joe then --

24 A. With that amendment, yes.

01:55 25 Q. And you noted that you only tested the magazine change a

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1 few times at the shooting range in St. Augustine with your
2 friend Joe Stevenson; isn't that right?

3 A. I think so.

4 Q. And you also noted that you personally hadn't tested the
5 magazine change on more than one gun, your own personal
6 handgun; isn't that right?

7 A. Yes.

8 Q. And if you look -- if you think back about Mr. Koenig's
9 demonstration video, Mr. Koenig was only performing those
10 magazine changes with a single handgun; isn't that right?

11 A. Yes, I think -- I mean I don't know if he had others in
12 his holster, I wasn't paying attention, but certainly he was
13 only changing mags on one of them.

14 Q. And at your deposition you testified, did you not, that
15 you viewed several other magazine change videos on the
16 Internet, but that you hadn't cited to any of those others
17 because you didn't see a need for it; isn't that correct?

18 A. Yes, they were duplicative.

19 Q. But at the same time you couldn't provide a single URL
20 for any of those other Internet videos demonstrating magazine
21 changes, could you?

22 A. I don't know if I could or could not, but I certainly did
23 not.

24 Q. So without that information the additional URLs for other
25 magazine change videos you might have watched, it would be

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1 impossible for the Court to verify whether those other
2 identified videos even concern magazine changes for
3 semi-automatic weapons; isn't that right?

4 A. Yes.

01:56

5 Q. And I also asked you at your deposition whether you ever
6 made an attempt to systematically evaluate the time necessary
7 to effect a magazine change on weapons that you knew had been
8 identified as weapons used in mass shootings, and you said
9 that you have not; is that correct?

01:57

10 A. Yes.

11 Q. I also asked you in the painstaking detail about whether
12 your research into magazine change times such as it was
13 involved any type of firearms magazine other than a box-type
14 magazine; do you recall that line of questioning?

01:57

15 A. Could you repeat the question?

16 Q. Sure. As you may recall, when I was asking you about
17 magazine change times we went through a whole list of
18 different types of magazines, including a box type, a drum, a
19 helical magazine, a coil magazine, a horizontal magazine; do
20 you remember that line of questioning?

01:57

21 A. Yes.

22 Q. And if my recollection is correct, you indicated that you
23 had not tested magazine change times on any of those other
24 type of magazines, other than a box-type magazine; is that
25 correct?

01:58

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1 A. That's correct.

2 Q. And you also mentioned in your deposition that to the
3 extent there's any academic literature relating to large
4 capacity magazines, it tends to refer to box-type magazines;
5 isn't that right?

6 A. I don't recall citing any academic literature on magazine
7 change times.

8 Q. And that wasn't exactly my question.

9 A. Then I need to hear it again; sorry.

10 Q. My exact question was, and you also mentioned that to the
11 extent there is any academic literature relating to large
12 capacity magazines -- and I didn't limit to it change times --
13 it tends to refer to box-type magazines; isn't that right?

14 A. Yeah, it sounds like something I said, yeah. Probably.

15 Q. And you also testified that as far as you are aware,
16 academic research accounts of mass shootings tend not to
17 specifically identify the type of magazine involved, but
18 generically refer to large capacity magazines regardless of
19 the type; do you recall that testimony?

20 A. Yes.

21 Q. We also discussed that when you were making your
22 assessment of the two to four-second magazine change in mass
23 shooting situations that you had assumed that shooters were
24 using box-type magazines; isn't that right?

25 A. Yes, it appears to be the case.

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1 Q. And you responded that you assumed that regardless of the
2 type of magazine the shooter was using, a magazine change
3 wouldn't take more than four seconds; is that correct?

4 A. If it were one of those other types of magazines besides
5 the box type?

6 THE COURT: So you didn't understand the question?

7 THE WITNESS: Yes, I didn't understand the question.

8 THE COURT: Restate the question.

9 MR. SHOWELL: Yeah.

10 Q. I asked you about magazine change times and you responded
11 that you assumed that regardless of the type of magazine the
12 shooter was using, a magazine change wouldn't take more than
13 four seconds; isn't that right?

14 A. My recollection is that -- at least what I had in mind
15 and I don't know if I said it or not, was that I was assuming
16 they were box-type magazines and therefore my information
17 about box-type magazines would apply to mass shooters changing
18 magazines.

19 Q. Let's take a look at your deposition. Page 100 --

20 A. Which tab?

21 Q. It's actually up on the rail in front of you. Page 100,
22 line 17, I asked you the following question.

23 Question: So with respect to your two to four-second
24 magazine change interval for mass shooters using large
25 capacity magazines, you're assuming, are you not, that mass

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1 shooters are using box-type magazines.

2 Your answer: I'm assuming that regardless of what type
3 they're using, that their magazine change times don't exceed
4 four seconds. And so that's the assumption that's critical
5 here, but I wasn't really making any assumption one way or the
6 other about what type of magazines the shooters were using.

7 Do you recall that testimony?

8 A. Yes.

9 Q. So you identify the use of box-type magazines as a
10 critical assumption to your two to four-second calculation;
11 isn't that right?

12 A. I don't -- I don't know if I was saying it was critical
13 or anything, but yeah, I was more or less assuming that mass
14 shooters use box-type magazines, and I think that's correct.

15 Q. Just on the critical point, I'm going to read your answer
16 again, page 100, line 22: I'm assuming that regardless of
17 what type they're using, that their magazine change times
18 don't exceed four seconds, and so that's the assumption that's
19 critical here.

20 Do you remember that testimony?

21 A. Yes.

22 Q. And you admitted that two to four-second magazine change
23 time was just an assumption; isn't that right?

24 A. No.

25 Q. And you also said that you weren't making any assumption

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1 about what type of magazines the shooters were using; isn't
2 that correct?

3 A. No, I was assuming basically -- I was effectively
4 assuming they were all box-type magazines.

02:03 5 Q. Your testimony on page 101 at line 3: But I wasn't
6 really making any assumption one way or another about what
7 type of magazines the shooters were using.

8 THE COURT: So what's the question?

9 MR. SHOWELL: He told me that he said that he wasn't
02:03 10 assuming that it was box-type magazines, and I'm refreshing
11 his recollection -- or rather impeaching him with his
12 testimony where he says I'm not assuming any type of magazine.

13 THE COURT: Oh, so it wasn't a question.

14 MR. SHOWELL: I was pointing out an inconsistency in
02:03 15 his testimony, your Honor.

16 BY MR. SHOWELL:

17 Q. And you acknowledged in your deposition testimony, did
18 you not, that all the videos that you watched demonstrating
19 magazine changes were made under ideal -- were made under
02:04 20 range conditions and not in shopping malls, theaters or
21 crowded public gatherings for example; isn't that right?

22 A. No.

23 Q. I'm sorry?

24 A. No.

02:04 25 Q. I'd like to refer you to page 102 of your deposition

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1 starting at line 15, and my question to you: Now I'd like to
2 ask you a little bit about the specific conditions portrayed
3 in those video excerpts that you reviewed on magazine changes.
4 Were they -- why don't you describe the conditions under which
5 those videos were made.

6 Answer: They were at target ranges and they were for
7 the explicit purpose of demonstrating magazine changes. They
8 weren't for the purpose -- they weren't sort of incidental or
9 part of the shooting competition or anything, they were just
10 stand-alone videos concerning magazine changes.

11 Q: So they weren't performed in for example a crowded
12 shopping mall?

13 A: No.

14 Q: Or they weren't performed in a movie theater for
15 example?

16 A: No.

17 Q: Or they weren't performed at an open air public
18 congressional meet-and-greet type event?

19 A: No.

20 Q: So would you agree with me for want of a better
21 term that those were sort of ideal clinical conditions under
22 which magazine changes were demonstrated.

23 Answer: Yes.

24 THE COURT: So I don't get this. You referred to
25 that testimony and you're not going to ask him a question

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1 about this? Why are you reading depositions in front of me?

2 I don't need depositions read.

3 MR. SHOWELL: Judge --

4 THE COURT: I don't get what you're doing here.

02:06 5 MR. SHOWELL: I asked him immediately preceding to
6 reading that testimony whether the videos showed magazine
7 changes in crowded shopping malls or theaters or public
8 gatherings and he said no. He said he didn't have -- I'm
9 sorry; can you read the testimony back?

02:06 10 THE COURT: No. I want to know what your -- I think
11 you should ask him a question.

12 MR. SHOWELL: I did ask him a question, your Honor,
13 and he gave me an answer that was contrary to what he had
14 testified on deposition, and I was pointing out that testimony
02:06 15 was inconsistent with what he had said here in this
16 proceeding.

17 THE COURT: So, Professor, does the testimony read
18 from pages 102 and 103 by Mr. Showell conflict with your
19 answer?

02:07 20 THE WITNESS: Absolutely not.

21 THE COURT: All right, thank you.

22 Now you can go on to the next point.

23 BY MR. SHOWELL:

24 Q. So the entire basis for your contention stated repeatedly
02:07 25 in your declaration as in this case as an accepted fact, that

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1 a magazine change requires two to four seconds, is one,
2 instructional video by a world champion professional speed
3 shooter performed on a single weapon type, your own unrecorded
4 investigation using your personal Glock handgun using a single
5 type of magazine, and several additional unidentified Internet
6 videos using unspecified weapon types and magazines; is that
7 right?

8 A. Yes.

9 Q. And you relied on that information as the basis for
10 stating that two to four-second magazine change interval as a
11 matter of accepted fact in an academic journal article on
12 Justice Research and Policy; is that right?

13 A. A referee journal, yeah, the referees accepted that.

14 Q. You were deposed in the Massachusetts case, Worman
15 against Healey; is that right?

16 A. Yes.

17 Q. And you were questioned about your assertion regarding
18 magazine change times in that deposition; is that fair to say?

19 A. I think so, yes.

20 Q. Would it surprise you if I told you in that case you
21 testified that it could take as many as 10 to 20 seconds to
22 accomplish a magazine change?

23 A. It would indeed.

24 Q. It would surprise you?

25 A. It would surprise me.

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1 Q. Okay. Let's take a look at tab 12. Tab 12, starting at
2 page 68, line 4, you were asked the following questions and
3 gave the following series of answers.

4 Question: Would it take longer in some cases if the
5 person changing the magazine was under stress?

6 Answer: It's possible.

7 Question --

8 THE COURT: I'm sorry; what line are you starting
9 at?

10 MR. SHOWELL: I'm starting on page 68, line 4, in
11 the excerpt from the Worman v. Healey deposition transcript of
12 Professor Kleck.

13 THE COURT: Okay.

14 Q. Question: Would it take longer in some cases if the
15 person changing the magazine was under stress?

16 Answer: It's possible.

17 Question: Is it possible to take any magazine and
18 fumble it in the process of putting it in the gun?

19 Answer: It's possible?

20 Question: If that happened it would take longer than
21 four seconds; right?

22 Answer: Yes.

23 Question: It could also take longer if the person
24 hadn't organized themselves to keep their magazines in easy
25 reach for the purpose of changing them; right?

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1 Answer: Yes.

2 Question: Meaning that if the magazine were not in a
3 belt or a pocket that was actually available, it would take
4 longer to change the magazine; right?

02:10 5 Answer: Under those conditions -- under those
6 circumstances, yes, probably would.

7 Question: Could take far longer than two to four
8 seconds; right?

9 Answer: I don't know about far longer, I mean I could
02:10 10 imagine it taking 10 or 20 seconds.

11 Was that your testimony from Worman v. Healey?

12 A. Yes, in response to a highly hypothetical question which
13 I don't think resembles reality.

14 Q. And you were under oath when you gave that deposition
02:11 15 testimony; is that correct?

16 A. Yes, I was under oath.

17 Q. Does that refresh your recollection as to having
18 previously testified under oath that it could take as many as
19 20 seconds to change a magazine under certain circumstances?

02:11 20 A. Yes, it refreshes my memory of my response to an
21 extremely hypothetical question that I think doesn't in any
22 way, shape or form resemble the real world. There is no upper
23 limit on the maximum amount of time it could take to change a
24 magazine; somebody could take hours and take days I mean
02:11 25 theoretical. There's only a meaningful lower limit, you know,

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1 how fast can it be upon.

2 Q. Are you finished?

3 A. Yes.

4 Q. Would you agree with me that if a shooter wanting to

02:11 5 shoot a hundred bullets and lawfully comply with A2761, wanted

6 to do that, he would have to have at least nine and possibly

7 10 magazines available?

8 A. Yes.

9 Q. And would you agree that someone who had a larger

02:12 10 capacity magazine, say a 15 or 20-round capacity magazine,

11 would make fewer magazine changes to accomplish that same

12 hundred shot goal?

13 A. Yes.

14 Q. Would you agree with me that every additional magazine

02:12 15 change that would be imposed by New Jersey Statute A2761, is

16 one additional opportunity for a shooter to drop a magazine?

17 A. You mean intentionally or accidentally?

18 Q. Accidentally.

19 A. Yeah, as long as you emphasize opportunity.

02:12 20 Q. Right. Every time you change a magazine it presents an

21 opportunity to drop it; is that correct?

22 A. Certainly.

23 Q. Also every time you change a magazine it also presents an

24 opportunity to fumble a magazine; is that correct?

02:13 25 A. Certainly.

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1 Q. And every time you have to change a magazine it presents
2 an opportunity that there might be some technical weapon or a
3 magazine malfunction; is that correct?

4 A. Yes, it's an opportunity.

02:13 5 Q. And if you were confronted by a mass shooter bent on
6 mayhem you'd prefer to have add many additional 20-second
7 opportunities to save yourself and others that might yet based
8 on a shooter having to change multiple 10-round magazines;
9 isn't that right?

02:13 10 A. I want as many interruptions of his shooting for whatever
11 reason.

12 MR. SHOWELL: Your Honor, I'm going to ask Deputy
13 Attorney General Lucas now to cue up and play a video clip
14 from the New York Times website of the recent Las Vegas mass
02:13 15 shooting.

16 MR. THOMPSON: Objection, your Honor. We object to
17 the relevance of the Las Vegas shooting. It was an act that
18 was committed as Professor Donohue on page 31 of yesterday's
19 trial said was committed with magazines that were 30 or more,
02:14 20 which were banned in New Jersey even before this law was put
21 into place. So whatever mayhem was performed in Nevada with
22 magazines that were banned under a law that isn't challenged,
23 doesn't have any relevance for this proceeding.

02:14 24 THE COURT: So what's the purpose that you're
25 showing the video for, Mr. Showell?

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1 MR. SHOWELL: Professor Kleck has engaged in an
2 extensive examination of magazine change times, and you may
3 recall some testimony from Professor Donohue yesterday that
4 criticized Professor Kleck's methodology in presenting that
5 evidence. And what I'd really like the Court to see is how a
6 mass shooting actually unfolds.

7 THE COURT: So this doesn't show anything about
8 change times?

9 MR. SHOWELL: I think it does implicitly, your
10 Honor.

11 THE COURT: Implicitly; what does that mean?

12 MR. SHOWELL: There are lengthy pauses in the
13 shooting, because Mr. Paddock was ensconced in a hotel room
14 and we didn't have surveillance eyes on him, we didn't know
15 what he was doing in those pauses.

16 THE COURT: So you don't know if he was changing
17 magazines.

18 MR. SHOWELL: I do not know that as a matter of
19 fact, your Honor. What I wanted to demonstrate is that every
20 pause in shooting is an opportunity to escape, and I think
21 that video demonstrates it quite significantly.

22 THE COURT: So what's the point here? You have to
23 go back over this with me. He's talking about change times.

24 MR. SHOWELL: Right.

25 THE COURT: So you're going to show me a clip that

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1 doesn't really show change times, but it shows pauses.

2 MR. SHOWELL: Right. And the thesis of an academic
3 piece that Professor Kleck -- or a thesis of an academic piece
4 that Professor Kleck has written is that because magazines can
5 be changed so quickly, the interval between shots isn't
6 affected by that because shooters have average rates of fire.

7 THE COURT: Professor Donohue referred to the
8 Virginia Tech incident, not Las Vegas; right? So how does
9 this --

10 MR. SHOWELL: He used an example, I'm using a
11 different example.

12 MR. THOMPSON: And the criticism that Professor
13 Donohue, too, your Honor, made had nothing to do with change
14 times. He was saying that the clock had started too early
15 because Professor Kleck had started the time when the two
16 people were murdered in their apartment, not on the campus.
17 But it had nothing to do with change times and this video
18 which doesn't show anyone changing a magazine certainly
19 doesn't show anything about change times.

20 THE COURT: So after you show this video, are you
21 going to ask the professor questions about it?

22 MR. SHOWELL: I was intending to.

23 THE COURT: You were.

24 MR. SHOWELL: I was.

25 THE COURT: Okay. So I'll allow you to show the

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1 video; I'll make a determination of what weight I give it when
2 I render my decision.

3 MR. SHOWELL: Thank you, your Honor.

4 (Https---www.nytimes.com-video-us-1000000005473328-las-
5 vegas-shooting-timeline-12-bursts.html)

6 BY MR. SHOWELL:

7 Q. When you viewed that clip, Professor Kleck, did you
8 notice then the pauses between shooting people were fleeing
9 the venue?

10 A. Yes.

11 Q. And you posit in your paper at tab 15 -- 14, I'm sorry;
12 the paper Large Capacity Magazines and Casualty Counts in Mass
13 Shootings, The Plausibility of Linkages, that it is average
14 rates of fire that matter not -- that it's average rates of
15 fire that matters; is that fair to say?

16 A. Yes.

17 Q. And when you posit in your paper that it's really average
18 rates of fire that matters, aren't you really asking the Court
19 to suspend its common sense based on the video clip of the Las
20 Vegas shooting that we just watched?

21 A. No, not at all.

22 Q. Do you remember me questioning you at your deposition
23 regarding the subject of mass shooting related casualties?

24 A. Yes.

25 Q. And you testified, did you not, that, "the fraction of

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1 people wounded by mass shooters who died is higher than in the
2 general run of assaults with guns."

3 A. Yes.

4 Q. And you also testified that the rates of fatal woundings
5 in mass shootings were "considerably higher" than in other
6 shooting incidents; correct?

7 A. That sounds like the same point as before, so yes.

8 Q. You also admitted that mass shooting events involving
9 large capacity magazines correlated with a higher number of
10 fatalities and non-fatal injuries; isn't that right?

11 A. Could you -- that was a complicated question; could you
12 ask that one again please?

13 Q. Sure, I'd be happy to. You also admitted that mass
14 shooting events involving large capacity magazines, correlated
15 with a higher number of fatalities and non-fatal injuries;
16 isn't that right?

17 A. Yes.

18 Q. Is it your position that the New Jersey legislature has
19 to wait for a Las Vegas style shooting before acting to curb
20 instrumentalities of mayhem like large capacity magazines?

21 A. No, of course not.

22 THE COURT: I have no further questions for this
23 witness, your Honor.

24 THE COURT: All right. Redirect, or do you wish to
25 take a break?

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1 MR. THOMPSON: Could we take a break, your Honor?

2 THE COURT: You may.

3 So, Professor, you may step down.

4 So we'll be back out in 20 minutes.

02:31 5 MR. THOMPSON: That would be nice. Thank you, your
6 Honor.

7 (Luncheon recess.)

8 THE COURT: The witness may take the stand.

9 Mr. Thompson, are you ready to go?

03:03 10 MR. THOMPSON: Yes, your Honor, thank you.

11 THE COURT: Professor, you are still under oath.

12 THE WITNESS: Yes, sir.

13 THE COURT: You may proceed.

14 MR. THOMPSON: Thank you, your Honor.

03:03 15 (REDIRECT EXAMINATION OF GARY KLECK BY MR. THOMPSON:)

16 Q. Professor, there were some questions about Ms. Allen's
17 qualifications; I want to just spend a minute on that. She
18 has her degrees in economics; is that right?

19 A. Yes.

03:03 20 Q. What are your degrees in?

21 A. Sociology.

22 Q. And what classes have you taught, generally speaking?

03:04 23 A. I've taught everything from introductory criminology to
24 undergraduates, but in last years, last 10 years or so of my
25 career I was teaching primarily methods classes to doctoral

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1 student; and they would include students -- I'm sorry, classes
2 in statistical analysis, survey research methods, causal
3 inference and research design.

03:04 4 Q. How long have you been publishing in the field of
5 criminology?

6 A. Since 1978.

7 Q. How many peer-reviewed articles approximately have you
8 authored during that time?

9 A. About 60.

03:04 10 Q. How many books have you written during that time?

11 A. Five.

12 Q. And where did you receive tenure, where were you
13 teaching?

14 A. Florida State University.

03:04 15 Q. What is Florida State's reputation for criminology?

16 A. According to the World University rankings it's the
17 number one program in the world.

18 Q. What prizes if any have you won in the field of
19 criminology?

03:04 20 A. I've won the Michael J. Hindelang Award, which is the
21 best book award in criminology for the book Point Blank, which
22 was about guns and violence.

23 MR. SHOWELL: Judge, we'll stipulate to Professor
24 Kleck's qualifications as an expert.

03:05 25 THE COURT: Okay.

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1 MR. THOMPSON: We're ready to move on.

2 BY MR. THOMPSON:

3 Q. So, you were asked a question about tab 2 in your binder

4 that Mr. Showell provided you, this was your declaration in

5 the Duncan case, and it's the -- you were asked about

6 paragraph 28 which showed of 992 mass shootings, in only nine

7 instances were the so-called large capacity magazines utilized

8 for a rate of less than one percent; do you remember that?

9 A. Yes.

10 Q. How does that -- and that number could be calculated

11 differently if you had a different definition of mass

12 shooting; is that right?

13 A. Yes.

14 Q. What definition of mass shooting do you use?

15 A. The one I use is more than six people shot regardless of

16 whether it was fatal or non-fatal.

17 Q. And utilizing your definition what is the incidence at

18 which large capacity magazines are utilized in mass shootings?

19 A. Six percent of mass shootings defined that way are known

20 to have involved a large capacity magazine.

21 Q. So 94 percent of the time these large capacity magazines

22 aren't even used in mass shootings; is that right?

23 A. Yes, as far as we know.

24 MR. SHOWELL: I have to object to non-foundation

25 grounds.

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1 THE COURT: Overruled.

2 BY MR. THOMPSON:

3 Q. Now, with respect to defensive gun use I'd like to ask
4 you some questions. You were asked about Professor Hemenway's
5 critiques of your work, and in particular there was a
6 suggestion that you had oversampled in the south and the west;
7 how did you adjust for that oversampling?

8 A. Well, when you want to compute a number like the percent
9 of respondents who had a defensive gun use, you have to adjust
10 for what are called sampling probabilities or the likelihood
11 of a person being selected into the sample. And it's a common
12 practice in surveys to intentionally overrepresent some groups
13 for the sake of having a larger raw number of cases of
14 interest.

15 In this case we wanted to include more gun owners who
16 therefore were more likely to be people who had had a
17 defensive gun use experience. So we intentionally
18 overrepresented males, people from the south and the west, but
19 we adjusted for that in computing the percent of people who
20 had a defensive gun use, we in effect gave less weight to each
21 male respondent and less weight to each person who resided in
22 the south and west and so on.

23 So the effect was it has no overall effect on the
24 percent we compute of the population who had a defensive gun
25 use, but it increases the raw number of cases we have to

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1 analyze if we want to know the details about defensive gun
2 use.

3 Q. Now, Professor Hemenway also criticized some
4 misclassification alleged errors; what is your response to
5 those criticisms?

6 A. Could you refresh my memory as to what the
7 misclassification was --

8 Q. Well, do you recall that he had critiques of your work?

9 A. Well, he certainly would characterize some of what people
10 claim are defensive gun uses as offensive uses, that's one
11 kind of misclassification. Or another kind of
12 misclassification would be there was no threat to begin with
13 and so people were not really defending against something,
14 they were defending against a nonexistent criminal threat,
15 that sort of thing.

16 Q. And you wrote a book entitled Armed; do you remember
17 that?

18 A. Yes.

19 MR. THOMPSON: And this is PX-42, your Honor. It's
20 been admitted into evidence.

21 Q. And is that where one would look to see your most full
22 and complete answer to these criticisms that Hemenway has made
23 on your calculation of the defensive gun use rate?

24 THE COURT: What page are you looking at.

25 MR. THOMPSON: 241 to 271. If I may approach, I'll

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1 just give a copy of the book to the witness.

2 THE COURT: You may.

3 (Handing to witness.)

4 THE WITNESS: Yes, I addressed every single

03:09 5 criticism that not only Hemenway had made, but anybody else in

6 the academic world who had made a criticism of that survey in

7 print. And I went one by one and showed how they were

8 irrelevant, or based on erroneous premises or known to be

9 wrong. I pointed out how they were speculative in many cases,

03:09 10 and also they were all one-sided.

11 If you're honestly interested in an objective way is

12 this survey generating too high or too low an estimate, you

13 consider both flaws that would lead to too high an estimate

14 and flaws that would lead to too low an estimate. But the

03:09 15 aforementioned critics Hemenway, Cook and Ludwig and all the

16 others, they were singularly one-sided, they only considered

17 errors that might lead to an overestimation.

18 And they were even wrong about most of those, but even

19 if they had been right it wouldn't imply an overestimate.

03:10 20 Because for all we know there's just as many errors that work

21 in the opposite direction that tend to make the estimate too

22 low.

23 And in fact, everything we know about surveys on

24 other controversial subjects indicates precisely that; in

03:10 25 short, false negatives are far more common than false

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1 positives, meaning wrongly denying you had let's say a
2 defensive gun use, is going to be more common than falsely
3 claiming you did.

4 BY MR. THOMPSON:

03:10 5 Q. Now, there was a question about the fact that not all
6 defensive gun uses occur in the home; do you recall that?

7 A. Yes.

8 Q. And I think Mr. Showell said if there were a million
9 defensive gun uses there'd be 370,000 in the home; do you
03:10 10 recall that?

11 A. Yes.

12 Q. And if one were to conclude that the number of overall
13 defensive gun uses was higher, would that same rate of
14 incidence in the home attain?

03:11 15 A. Well, obviously the estimate would be much higher then.

16 Q. Now, there was a discussion in the binder, it was -- I
17 don't know that you have to look there, but it was tab 16, it
18 was the criminal victimization in the United States 2008, this
19 was a DOJ document, it was unnumbered; and there was table 70,
03:11 20 that said in the footnote that the estimates were based on 10
21 or fewer sample cases. Do you recall that?

22 A. Yes.

23 Q. So how do you square your estimate of overall defensive
24 gun uses with the findings of this report?

03:11 25 A. Well, as I pointed out in multiple places, including the

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1 book Armed, that survey the National Criminal Victimization
2 Survey never directly asks anyone did they use a gun for
3 self-protection against another person. They only provide an
4 opportunity for people to sort of volunteer that information.

03:12

5 What they actually ask is during this incident did you do
6 anything to protect yourself, and if the respondent wants to
7 volunteer the very controversial detail that they used a gun
8 to protect themselves they can, but you can't produce a
9 reliable estimate just waiting for people to volunteer that

03:12

10 kind of detail, especially when it's something as sensitive
11 and controversial as pointing a deadly weapon at another human
12 being.

03:12

13 Q. Now, reference was made to a CNN article where a Mr.
14 Siegel had made some remarks about defensive gun use; do you
15 recall that?

16 A. Yes.

17 Q. What is your response to Mr. Siegel's analysis?

03:13

18 A. Well, I didn't really know what his analysis was, it was
19 sort of a secondhand news media account, it's not something
20 that's been published in a refereed journal. So the first
21 reaction was I have no idea what his methods were, but he also
22 was clearly saying, assuming it was accurately quoted by CNN,
23 something that's a logical impossibility, that he can know
24 what all of the correlates of crime are, and that the one
25 that's the highest correlate of mass shootings is the presence

03:13

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1 or absence a ban on large capacity magazines.

2 Well, no one can know all of the correlates. For all
3 we know and for all Michael Siegel knows there are dozens that
4 have a higher correlation with a rate of mass shootings or
5 homicide in general or violence in general.

6 But I also know from reading Mr. Siegel's other
7 research on guns and violence, is he's unusually ignorant. He
8 doesn't have any background in criminology, and when he states
9 his models, what other variables did I control for in trying
10 to assess the impact of availability of guns or of a gun
11 control law, his selection of control variabilities is
12 incomplete, inaccurate; he includes controls that really don't
13 affect violence, he leaves out large numbers of variables that
14 do affect crime rates.

15 And so I know from prior experience with his research
16 he's unusually inept on that particular subject matter. He
17 may have other areas of expertise, but his knowledge of the
18 correlates of crime is negligible.

19 Q. Now, there was a question about the -- that back in 1993
20 40 percent of defensive gun uses involved semi-automatic
21 pistols; my question is what's happen to the distribution of
22 firearms in the United States since 1993?

23 A. It's shifted in the direction of a higher percentage of
24 guns being semi-automatic guns. I mean there was a time when
25 less than half of the handguns in this country were

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03:15 1 semi-automatic, now better than 80 percent of them are
2 semi-automatic pistols. And there have been similar trends
3 for rifles, although we don't have such precise data from the
4 Bureau of Alcohol, Tobacco and Firearms. In short, a bigger
5 share of the guns now are the type that you -- that could use
6 large capacity magazines.

03:15 7 Q. Now, a chart was put on the screen from Ms. Allen's
8 declaration showing that most of the time people in their home
9 when they're engaged in defensive gun use don't have to shoot
10 10 bullets or more; why is there a burden on self-defense even
11 if she's right, implicated by a law like that that's at issue
12 here?

03:16 13 A. Well, first of all I don't think there is anything
14 meaningful as a description of defensive gun use in general in
15 either of the two studies or sub-studies that she did. She
16 was dealing with carefully selected subsets of defensive gun
17 uses, unlike my research where I addressed basically any kind
18 as long as they involve either threatening or attacking a
19 criminal using a gun.

03:16 20 So in the one case she's trying to draw conclusions
21 from cases that were selected by news reporters and similar
22 news providers to write a story about, and in another case
23 it's cases selected by NRA staffers to appear in the Armed
24 Citizen column of an NRA magazine. These are not random
03:16 25 selection of incidents.

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03:17 1 I mean, you know, the NRA wanted to make defensive gun
2 use look good, so the only incidents they're going to put in
3 their magazine are the ones that turned out okay, that make
4 gun owners look responsible and prudent, and, you know, they
5 only react to real threats and the people they oppose were
6 clearly bad guys. This is not a representative sample of all
7 defensive gun uses. It's carefully picked out by a sample of
8 defensive gun uses.

03:17 9 So, you know, if the NRA thinks they don't want people
10 to look like they're flinging lead indiscriminately and firing
11 huge numbers of rounds and using excessive force, they're not
12 going to include an incident like that with many rounds fired
13 in the Arm Citizen column.

14 Q. So which way does that bias cut?

03:17 15 A. It works in more or less suppressing the representation
16 of cases that do involve over 10 rounds being fired.

17 Q. But for the instances in which 10 rounds are not fired,
18 and they are certainly some, in fact most in that category,
19 then how is there still a burden on the right of self-defense
03:17 20 implicated by the law that's at issue here?

21 A. Right. Well, you know, there's something different about
22 how a ban on large capacity magazines is going to affect New
23 Jersey's potential crime victims and how it will affect
24 offenders. Offenders are the ones who determine when and
03:18 25 where a criminal attempt will be made. If they're going to --

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1 if they're resolved to shoot a lot of people, they determine
2 that it's going to happen on Tuesday at 2:00 in the afternoon
3 and it's going to be some in such and such shopping mall or
4 whatever.

03:18 5 That's not the way it is for New Jersey citizens. They
6 don't know when crime victimizations are going to occur. And
7 so they're not going to have the same adaptations available to
8 them of carrying or possessing multiple magazines or multiple
9 guns everywhere they go. Who in New Jersey is going to have
03:18 10 multiple magazines and multiple guns in every room of the
11 house; and for those who can legally care because they have a
12 permit how many are going to tote around huge numbers of
13 magazines.

14 So that's not a practical adaptation for the victims.
03:19 15 And so victims are burdened by the fact that they'll be at a
16 tactical disadvantage, they won't have to ability to fire
17 large numbers of rounds if it turns out that they need them.
18 Likewise they won't -- the fact that they clearly don't have
19 that ability will send a message to any criminal aggressors
03:19 20 this guy doesn't have the ability to fire large numbers of
21 rounds, so it won't have the same deterrent effect.

22 Q. Now, you were asked about your guess that you gave to a
23 news reporter that there were 1.2 million defensive gun uses
24 in the United States; do you recall that?

03:19 25 A. Yes.

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1 Q. What is your view as to the best estimate now based on
2 the most current data as to the number of defensive gun uses
3 in the United States?

03:19 4 A. Well, there have been two national surveys done in 2015
5 and 2017, one by CNN in 2015, and one by the Pew Research
6 Organization in 2017; so they're far more recent than my 1993
7 survey, so that's good. But they're not as detailed. So I
8 can't say anything about the specifics of what happened in the
9 defensive gun uses.

03:20 10 But they asked a nationally representative sample of
11 American adults, have they had a defensive gun use, and
12 they -- they had professional interviewers, they had
13 probability samples, they had all the bells and whistles that
14 a good survey's supposed to have; and those surveys implied
03:20 15 2.3 million defensive gun uses in one survey, and 2.5 million
16 in the other. So that's an actual database estimate, it's not
17 a guess. And so if the reporter were to ask me now well,
18 what's the annual number of defensive gun uses in the United
19 States, I would base it on that information.

03:20 20 Q. And why might the number of defensive gun uses have
21 remained relatively constant from 1993 to the present even if
22 crime rates were lower?

03:21 23 A. It's something of a coincidence. You have to remember
24 those aren't per capita rates, I mean they hadn't taken
25 account a population increase, but there's something like 69

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1 million more Americans today than there were in 1993. So
2 based on the sheer number of increased people who could have a
3 gun and use it for self-defense, that would be a factor that
4 would increase other things being equal defensive gun uses.

03:21 5 On the other hand, as I've said before, there's less
6 crime; because when I did my survey it was definitely a peak
7 crime year in 1993. So you got some forces pushing the
8 estimate -- the raw number of estimated defensive gun uses up,
9 and others pushing it down; just coincidentally they more or
03:21 10 less happen to cancel out and you yield estimates pretty
11 similar to my 1993 estimate.

12 Q. How many violent crime incidents occur in the United
13 States each year in which the victim faces multiple offenders?

14 A. On the order of 800,000 a year.

03:22 15 Q. And how many of these incidents, if any, involve four or
16 more assailants?

17 A. About 250,000.

18 Q. And what percentage of defensive gun use incidents
19 involve multiple assailants?

03:22 20 A. Most of them do.

21 MR. SHOWELL: Most is not a percentage; objection.

22 A. About 52 percent.

23 Q. Thank you, Professor Kleck. What opinion do you have, if
24 any, as to whether a citizen confronting multiple assailants
03:22 25 would want to have a magazine holding more than 10 bullets?

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1 A. Could you repeat the question?

2 Q. Sure. What opinion do you have as to whether a citizen
3 confronting four or more assailants, would want to have a
4 magazine with more than 10 bullets in it?

03:22 5 A. Well, he -- if he's facing adversaries who can't be
6 stopped unless they're shot, then he would have to shoot four
7 people; but he's not going to hit each individual with every
8 shot. And even the shots that he does hit with, don't
9 necessarily incapacitate or stop the aggressor.

03:23 10 So even optimistically assuming that every single shot
11 he landed on an offender successfully stopped the individual,
12 we know that at best optimistically maybe one in three shots
13 fired by a defender will hit the offender. So it takes
14 roughly three shots per offender, and if you've got four
03:23 15 offenders that implies at least 12 rounds. Of course if you
16 have substantially more than four offenders then the number
17 would go up.

18 Q. Okay. And I'd like to direct your attention to some
19 testimony we heard earlier in the week; we're going to put it
03:23 20 up on the board. It's Mr. Stanton's testimony, starting on
21 page 78, at line 10. It says: Do you agree that civilians
22 can also find themselves in situations in which they require a
23 firearm for self-defense; they possibility could.

24 MR. THOMPSON: We're going to go down through page
03:24 25 82.

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1 Q. And would you agree that gunfights are also highly
2 stressful situations for law-abiding citizens; yes.

3 Would you expect a civilian involved in a gunfight to
4 have a lower hit rate than a law enforcement officer involved
03:24 5 in a gunfight; I wouldn't know.

6 And then if we continue on, he's asked: May I direct
7 you to page 116 of the deposition transcript beginning on line
8 3, I asked you would civilians have higher or lower hit rates
9 than police officers all else being equal? He answered:

03:24 10 Civilians would have lower hit rates.

11 What is your reaction to that testimony? How if at all
12 does it relate to your opinions in this case?

13 A. If they have lower hit rates then they'd need to have
14 more rounds per offender to stop them. And so instead of it
03:25 15 being three rounds per offender it may be four or five or
16 whatever, because their hit rate wouldn't be as high as for
17 police officers.

18 Q. If there are 2.4, 2.5 million defensive gun use incidents
19 each year, how many would involve a defender firing at or
03:25 20 attempting to hit an assailant?

21 A. Well, based on the 1993 survey, 15.6 percent.

22 Q. Okay. And so we could just do that math.

23 Now, I'd like to ask you some questions about change
24 time. We saw the video from Mr. Koenig; you also testified
03:25 25 that you yourself had gone to the range and that you were

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1 timed using -- what did you say, an audio timer?

2 A. Yes.

3 Q. What is an audio timer?

4 A. It's a device that very precisely measures the interval

03:26 5 between shots. So it detects a shot being fired, and then
6 there's a clock running, and to at least the nearest 10th of a
7 second or possibly the nearest 100th of a second, it will tell
8 you how much of an interval there was between that shot and
9 the next shot.

03:26 10 So, for example, if I empty one magazine and then
11 reload it with another fresh magazine and then fired out of
12 that fresh magazine, the audio timer would give you a very
13 precise estimate of the span of time between the last shot
14 fired before the magazine change, and the first one fired
03:26 15 after the magazine changed.

16 Q. And what was your time?

17 A. My time was about three seconds at best, four seconds
18 more commonly, because I'm kind of a crummy shooter.

19 Q. Okay, that was what I was going to ask.

03:26 20 And you also said that you would watch some other
21 videos; were the other videos of world champion shooters --

22 A. No, no.

23 Q. What were they --

03:27 24 A. There's a real good one currently available on the
25 Internet where there is one experienced shooter, he obviously

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1 knows what he's doing; and then a woman who is clearly not an
2 experienced shooter, you can tell that from numerous mistakes
3 she makes on the range, and she was still -- she was doing
4 better than me, for example, because occasionally she'd get a
5 two-second magazine change, and I don't think she was ever
6 worse than four seconds. But she was most commonly two or
7 three seconds per magazine change.

8 Q. Now, we looked at a study of yours in which you had
9 published the two to four-second number, and you had said it
10 was a referee journal; do you remember that?

11 A. Yes.

12 Q. What does that mean, a referee journal?

13 A. It means other experts in the field have seen the
14 manuscript, they're asked for their opinion of it, and they're
15 asked for a recommendation, should it be published or not. So
16 they -- they can suggest that changes be made and then publish
17 it, they can suggest that it be rejected out of hand; and
18 usually there's anywhere from three to five reviewers or
19 referees.

20 Q. Did any of the three to five reviewers push back on your
21 two to four-second calculation?

22 A. No.

23 Q. Now, I'd like to direct your attention again to the
24 screen to some testimony we heard earlier in the week from Mr.
25 Stanton; this is trial transcript page 74. If we look at

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1 lines 19 to 22, scroll down there:

2 Q. With training and practical use, would you agree
3 that a person could change a magazine from lock-back position
4 in two to four seconds?

03:28

5 Answer: Yes I would.

6 What relevance, if any, does that have for your
7 opinions in this case?

03:28

8 A. Well, it has a special relevance in light of the video we
9 just saw, because the video about the Las Vegas shooter while
10 that is a wildly unusual mass shooting, it's representative at
11 least in one respect, it describes how this guy planned the
12 attack in advance and spent weeks accumulating guns and
13 ammunition and magazines; in other words he's precisely the
14 sort of guy who would practice magazine changes, marksmanship
15 and everything else related to skill with firearms.

03:29

16 So, what a person with training and practical use could
17 accomplish is precisely what's relevant to that kind of
18 shooting. More broadly that's characteristic of most mass
19 shooters, they for whatever demented reasons they plan their
20 attacks for weeks and months, and then when they get around to
21 doing it they act in a very -- what to bystanders look like a
22 very deliberate reasonable business-like fashion. It's what
23 witness after witness says, they're appalled by it, they're
24 astounded by it, but it's what they say.

03:29

03:29

25 Q. Now, you were shown a portion of your Massachusetts

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1 deposition where I think you said something like it's
2 theoretically possible it can take 10 to 20 seconds, you said
3 well it could take days even possibly; what is the relevance,
4 if any, to this case of the fact that some people might fumble
5 around for 10 or 20 seconds?

6 A. Well, my understanding is that the State is arguing that
7 banning large capacity magazines will reduce the casualty
8 count in mass shootings. It's -- their emphasis is entirely
9 on mass shootings, it's not on ordinary crime where the
10 criminals either shoot either no rounds at all or just one or
11 two.

12 And the large capacity -- I'm sorry; the mass shootings
13 that use large capacities simply don't correspond with the
14 view of a mass shootings that one would hear from advocates of
15 large capacity magazines. They don't involve people being
16 tackled while they're reloading; they -- they don't involve
17 people dropping the magazine and taking 20 seconds to reload.
18 Hypothetically, sure it could take 20 seconds, it could take
19 20 hours if somebody wanted to stretch it out. But what
20 matters is what actually happens in real mass shootings that
21 we know about, because it's the best guide to what's going to
22 happen in the future.

23 Q. Well, how many mass shootings have you looked at?

24 A. Initially I had looked at hundreds, but mostly I looked
25 through them to sort them out to identify the ones that

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03:31 1 involved a large capacity magazine. Because, you know, it
2 seems painfully obvious but it took me a while to realize the
3 simple point; that the only incidents in which use of a large
4 capacity magazine could have affected the number killed and
5 injured, is if a large capacity magazine was used.

6 So, I eventually confined my attention to as
7 comprehensible a list of all of the mass shootings that I knew
8 to involve a large capacity magazine, and there were 23 of
9 them?

03:32 10 Q. And what was the time period of those 23 mass shootings
11 that you looked at?

12 A. That was from 1994 through 2013, a 20-year period.

13 Q. And there was discussion about the fact that you had done
14 this two to four seconds focusing largely on box magazines;
03:32 15 why did you focus on box magazines?

16 A. Officially it was just because I assumed based on all
17 those media accounts that the mass shooters were all using
18 box-type magazines, but I hadn't systematically recorded that
19 the way I recorded things like the gun types they used or the
03:32 20 largest magazine capacity they used and so on.

21 And so it was brought up in the deposition, well, you
22 know, is it possible that the time it takes to change other
23 kinds of magazines would be longer and wouldn't that be
24 relevant. And so after the deposition I went back and looked
03:32 25 myself. I looked for the gun type, the specific make and

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1 model that was used; if the articles itself that were
2 available to me didn't say what type of magazine was used, I
3 consulted a comprehensive catalog or compilation of catalogs
4 called Gun Digest, 2018 edition of Gun Digest. I looked up
5 those makes and models to see what was the magazine capacities
6 and what type of magazine was offered by the manufacturer when
7 you originally purchased the gun.

8 And so what I found was, first of all, of the 23 mass
9 shooters that used a large capacity magazine, every single one
10 used a box-type magazine, without exception. None of them
11 used any of the types of other types of magazines with two
12 exceptions; there were two mass shootings in which the shooter
13 was known to have used a drum-type magazine. And in at least
14 one of those incidents it was inconsequential; this was the
15 Aurora, Colorado shooting movie theater, the guy fired it and
16 it failed after a few rounds. In neither of the two incidents
17 could I establish that anybody was actually shot with a
18 drum-type magazine.

19 And no, I don't know how long it takes to change a
20 drum-type magazine, but, you know, it makes very little
21 difference obviously. All 23 mass shooters without exception
22 used box-type magazines and only two were known to have used
23 any other type, and they only used one of the other types
24 which is the drum-type magazine.

25 Q. According to your analysis, how long do mass shooters

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1 take between shots?

2 A. Almost always more than four seconds. There are a few
3 where they took a little bit less than that, for example, the
4 Virginia Tech shooting that the professor yesterday brought
5 up. He claims that I made an error in calculating the time of
6 the shooting, because I began when the overall shooting began
7 in an off-campus location, and I should have only focused on
8 the beginning of the second round of shooting. So I went back
9 and explored that.

10 And I figured out -- I found there were media accounts
11 of the official Virginia report on the Virginia Tech shooting,
12 and they established the number of rounds that were fired, and
13 I think it was 174; and that the shooting even in the period
14 that the professor referred to lasted I think nine minutes.

15 Which is 540 seconds, and you divide 540 by 174 and it turns
16 out it was even in what the professor characterized as very
17 rapid fire, even if that incident, even in the portion of the
18 incident he talked about, it was over three seconds between
19 each shot.

20 Which again is completely supportive of my position
21 that changing magazines wouldn't alter -- wouldn't show down
22 the rate of fire, because mass shooters take that amount of
23 time even when they're not changing magazines; that is, they
24 take either three seconds between shots or in many cases far
25 more than that.

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1 Q. Now, reference was made to a pause that would allow a
2 bystander to tackle or stop a shooter; how many times has that
3 happened in the mass shootings that you looked at over that
4 20-year period?

03:36 5 A. Well, you know, it's -- first of all it's clear that
6 there's always pauses in all shootings or some reason or
7 another, even in the Las Vegas shooting very long pauses. We
8 don't know why he was pausing, could have been magazine
9 changes, could have been a dozen other things. So there's
03:36 10 always in all mass shootings opportunities for people to
11 escape because of the shooter is pausing.

12 But what's relevant to the effective large capacity
13 magazine ban is whether there's any additional time, because
14 now you forced offenders to make more magazine changes because
03:37 15 now they only have small capacity magazines. And my research
16 indicates well, if they're not slowing their rate of fire, if
17 their of fire can be exactly the same even if they do take
18 more opportunities to change magazines, it's not going to make
19 a difference.

03:37 20 But I've looked specifically at the issue of well, are
21 these guys, these mass shooters, stopped by some intervenor or
22 they tackled because the guy was reloading, that's why he was
23 pausing in his shooting; and I know there's maybe four cases
24 over the period that I studied where advocates of large
03:37 25 capacity magazine bans had claimed that there was an

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1 interruption due to a magazine change and then the guy was
2 tackled and the shooting was stopped.

3 And upon further investigation, not a one of them could
4 be confirmed. There were other reasons, usually having to do
5 with a failure of the gun or the magazine while the shooter
6 was pausing. And the reason that's relevant to what we're
7 discussing today is New Jersey's ban on large capacity
8 magazines isn't going to, you know, affect -- it's not going
9 to improve the jam rate or reduce the jam rate, it's not even
10 intended to do that; it will only induce would be mass
11 shooters to make more magazine changes.

12 So it's only being tackled while there's a magazine
13 changing go on that can support the case for banning big
14 magazines. And as far as I know it just -- it hasn't occurred
15 in a quarter of a century in the entire United States.

16 Q. Now, you were shown a video about Las Vegas, and one of
17 the justifications that was put forth for its relevance was
18 that if there was lawful compliance, that if New Jersey had a
19 law that said that people couldn't possess a magazine with
20 more than 10 bullets, that might have some sort of impact on
21 mass murderers. In your opinion how likely is it, if at all,
22 that mass murderers would be deterred from killing people by
23 New Jersey's ban on magazines that can hold more than 10
24 bullets?

25 A. Well, one of the things we know with mass murderers in

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1 general or mass shooters in particular is these are unusually
2 powerfully motivated people. They may have motivations that
3 we don't understand, that don't make sense to a rational mind;
4 they may be based on complete delusions like everybody's out
5 to get me, or racial minorities deserve to be exterminated, or
6 I hate all women and now I want to kill all the women. But
7 they are very powerfully motivated.

8 And one obvious piece of evidence to indicate that is
9 lots of them are willing to die; they either kill themselves
10 at the end of the incident, they committed it in a way they
11 have no realistic chance of escaping, or they provoke the
12 police into doing it. They know they're not going to get away
13 with it because nobody gets away with it. The very best they
14 can hope for to is being locked in a cage for the rest of
15 their natural lives.

16 And so these are people who are willing to take not
17 just a high risk, but to undertake an activity that's almost
18 certainly going to result in those -- those results. So these
19 are powerfully motivated people. They're also people whose
20 motivation causes them to plan at length and make great
21 efforts and go to expense and extra effort to acquire more
22 guns, more weapons and so on.

23 So the relevance to the New Jersey case is if you're in
24 a state where just across the state boarder in Pennsylvania
25 there's ample availability of the very magazines that are

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1 banned in New Jersey, it scarcely takes any effort at all; you
2 need only the weakest motivations to go over and get a
3 substitute magazine that's legally available over there.

03:41 4 Q. Now, Professor Donohue testified yesterday that these
5 magazines of more than 10 bullets are readily available; what
6 do the Cook and Ludwig data from the late '90s tell us about
7 the ready availability of these magazines of more than 10
8 bullets?

03:41 9 A. That survey was fielded in the 1994, not the '90s but
10 1994, and the surveyors asked people first of all did they own
11 a gun, and then a gun they owned among those who said yes, it
12 was randomly selected. They may have owned 12 guns but, you
13 know, the interviewer randomly selected one of the 12 to ask
14 detailed questions about.

03:42 15 And they asked the owner how many rounds does that gun
16 hold when it's fully loaded. And so you can calculate from
17 those figures the percent that held more than 10 rounds. And
18 so that's the relevance, that's what --

19 Q. What is the percent that --

03:42 20 A. The percent is a bit over 14 percent -- I'm sorry; 18
21 percent of all firearms at that time in 1994, were equipped
22 with magazines holding over 10 rounds.

23 Q. Well, just to be clear, so it's 10 or more was 18
24 percent?

03:42 25 A. They originally had 10 or more, but, you know, obviously

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1 what's really relevant to a ban like New Jersey's is you want
2 to know how many held 11 or more rounds.

3 Q. So what's the answer to that question?

03:42 4 A. Well, I had to go back through the raw data. The raw
5 data are publically available, you can get them off an on-line
6 data archive if your university belongs to that archive and
7 analyze the data yourself.

8 And so we had asked the exact number, what is the exact
9 number of rounds that gun can hold when it's fully loaded; so
03:43 10 some people would say 11, some people would say 13, they can
11 say any specific number, they didn't give a range. So I could
12 go back in the data and compute the fraction that held 11 or
13 more rounds.

14 Q. And what was that?

03:43 15 A. And that was the -- I think the -- oh gosh; that was the
16 14 percent that I initially said I think.

17 Q. All right. Now, I want to ask you some questions about
18 causation. And what is your view about the alleged
19 correlation between states that ban magazines that can hold
03:43 20 more than 10 bullets and lower rates of mass shootings?

21 A. Well, I'd make the same comment about that correlation
22 that I would about any correlation between the presence or
23 absence any kind of gun control law and violence rates of any
24 kind. The problem in isolating the effect of the law is you
03:44 25 have to separate it from the effect of all the other factors

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1 that influence violence. In particular you have to control
2 for the factors that would include influence not just the
3 violence rate, but whether or not people supported gun
4 control.

03:44 5 The problem though is that the same people that have
6 very strongly either you can say pacifists or antiviolen
7 sentiments, those same individuals would be the ones most
8 likely to support a gun control law. And it's clear there's a
9 difference in that percentage in, you know, a place like
03:44 10 Massachusetts or for that matter New Jersey versus let's say
11 Texas. They're basically more tolerant of violence in some
12 places than in others.

13 And so if you're very strongly supportive of reducing
14 violence, you'll be strongly supportive of any measures
03:45 15 intended to do that, including gun control laws. So the
16 electorate in Massachusetts and New Jersey for that matter,
17 it's very supportive of stricter gun laws and they get
18 stricter gun laws.

19 But even if those laws are totally ineffective, you'd
03:45 20 still expect those states to have less violent behavior, less
21 violent crime because people have more strongly held views
22 hostile to violence. They'll criticize their neighbors who
23 are violent, they'll demand, you know, that something be done
24 about this violence problem; they'll teach their children
03:45 25 especially to avoid violence and resolve disputes verbally

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1 rather than through violent behavior.

2 So the long and short of it is antiviolenace attitudes
3 will itself have an effect on rate of violent behavior; it
4 will reduce the violent behavior the stronger those views are.
03:45 5 But it will also produce more support for gun control laws.

6 Q. Are you aware of any research that's been able to show
7 that magazines that hold more than 10 bullets can cause a
8 reduction in mass shootings?

9 A. No, the only evidence that is support -- that is cited in
03:46 10 support of large capacity magazines are simple correlations;
11 and as any beginning statistic student knows correlation is
12 not causation. And we have very specific reasons for
13 believing that this particular correlation is a spurious
14 correlation, meaning it's not causal in nature, it's not one
03:46 15 thing causing another; but rather both factors, somebody using
16 a large capacity magazine, and the number that they hurt are
17 both being influenced by the same common antecedent factor,
18 which is a desire to hurt a lot of people.

19 Q. Yes, and I want to ask you that. So if there were a
03:46 20 correlation between these magazines with more than 10 bullets
21 and people being injured in mass shootings, what does that
22 tell you about the causal mechanism between the magazine size
23 and the result you see, does it tell you anything?

24 A. It doesn't tell me anything about the mechanism.

03:47 25 Q. Why not?

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1 A. It's just a statistical pattern. In effect you're seeing
2 the result of whatever causal mechanisms are going on, but
3 you're not seeing into the inner mechanisms themselves, you
4 have no idea why that association is coming about.

03:47 5 But an example of what would be an exploration of the
6 mechanisms by which large capacity magazines could affect the
7 number of people hurt in mass shootings, is the research I've
8 done where I took what advocates of large capacity magazines
9 had said how they thought those bans would reduce the number
03:47 10 of people hurt in mass shootings. I took their arguments as
11 being the best available specifications of how it is having a
12 large capacity magazine would increase the number of people
13 hurt. And then I tested it by comparing those propositions
14 against the data showing the details of mass shootings
03:48 15 actually occurred.

16 So for example, if you say the mechanism is that the
17 law bans large capacity magazines, if you're fortunate enough
18 that these highly motivated killers nevertheless somehow don't
19 manage to get a substitute illegal large capacity magazine,
03:48 20 and so now they have to use smaller capacity magazines, our
21 argument was okay, now these guys will have to change
22 magazines more often to fire the same number of rounds and
23 hurt the same number of people, and it's during those magazine
24 changes where you would observe the benefit.

03:48 25 The benefit would be now those guys could be tackled,

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1 because the guy's not shooting, he's concerned with changing
2 his magazines; and then bystanders, potential victims could
3 tackle him and stop the shooting. And it is a perfectly
4 plausible hypothesis; it's just not something that actually
5 happens in the real world, not the world we live in. There
6 might be imaginary worlds you can think up in your head where
7 it fits that advocate's view, but it's not something that's
8 happened even once in the United States in last quarter of a
9 century.

10 Q. What role does the intent of the shooter play in the
11 lethality of his actions?

12 A. Well, the more you want to hurt a lot of people the more
13 likely it is you'll do; I don't think anybody would quibble
14 with that, even the strongest advocates of banning large
15 capacity magazines don't quibble with that. Nobody is saying
16 there's a perfect correspondence between your intentions and
17 the result, it's just that there's certainly a positive
18 relationship. The more you want to hurt a lot of people for
19 whatever demented reasons, the more likely you are to actually
20 do so.

21 Q. Now, what is your opinion about whether the number of
22 mass shootings is increasing?

23 A. The level of mass shootings hasn't changed in decades;
24 probably the last time it was actually an increase would have
25 been the early '80s. There really was an increase during the

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1 '70s and early '80s, but since then it's simply gone up down,
2 up down, up down and long term there's no trend at all.

3 Q. Now, what empirical work, if any, has been done on the
4 relative efficacy of a 10-round magazine ban versus a 15-round
5 magazine ban?

6 A. I'm not aware of any.

7 MR. THOMPSON: Your Honor may I have a moment with
8 my colleagues?

9 THE COURT: You may.

10 MR. THOMPSON: Thank you.

11 (Brief pause.)

12 MR. THOMPSON: Your Honor, we have no further
13 questions for the witness.

14 THE COURT: Okay, thank you.

15 Is there any reason to re-cross?

16 MR. SHOWELL: Yes, I believe there is, your Honor,
17 but it would be exceptionally limited.

18 THE COURT: Why don't you tell me what the area is
19 and I'll make that decision, and then we'll go from there.

20 MR. SHOWELL: Professor Kleck was questioned
21 somewhat extensively about instances of tackling of mass
22 shooters while reloading, and I believe he said there was no
23 instance in which that had happened in the United States in
24 the last quarter century, and he was talking about --

25 THE COURT: So you want to go into that area?

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1 MR. SHOWELL: Yeah, I actually do.

2 MR. THOMPSON: Your Honor, that was not --

3 MR. SHOWELL: Talking about it was a perfectly

4 plausible hypothesis in an imaginary world and it hasn't

03:52 5 occurred once in the U.S. in the last quarter century was his
6 testimony with bystanders tackling shooters.

7 MR. THOMPSON: This is not new, your Honor, this was
8 in his declaration, he was asked extensively at his deposition
9 about it, and I think the Court's ruling has been very

03:52 10 Solomonic to date of saying if it's new there can be recross,
11 if not not, I don't think it meets that standard.

12 THE COURT: I'll give you one or two questions.

13 MR. SHOWELL: I need maybe three, your Honor.

14 THE COURT: So I'll let those three go. Because I
03:52 15 was interested in the tackling portion of your testimony.

16 (RECROSS-EXAMINATION OF GARY KLECK BY MR. SHOWELL:)

17 Q. Professor Kleck, I asked you at your deposition which
18 happened in August of this year a couple weeks ago, whether
19 you were familiar with a shooting that had happened at a

03:53 20 Waffle House Restaurant in Tennessee, and you testified that
21 you were not aware of that shooting, notwithstanding that it
22 was a mass shooting which is in your field of criminology, and
23 it was something that had occurred with in the last six

03:53 24 months, I think it might have been April of this year. Do you
25 remember me asking you -- and you said you didn't know about

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1 it.

2 Do you remember that area of inquiry at your
3 deposition?

4 A. Yes.

03:53 5 Q. Would it surprise you to know that in that incident --
6 and I can have Deputy Attorney General Lucas pull up the news
7 account of that -- that the shooter, Mr. Reinking, was tackled
8 by a bystander when Mr. Reinking stopped to reload his weapon.

9 So contrary to your assertion that that factual
03:54 10 scenario has not occurred in the United States in the last
11 quarter century, not only has it happened in the United States
12 in the last quarter century, it happened this year.

13 A. Yes, I would be surprised because that's not what
14 happened. Or at least that's -- that can't be confirmed as
03:54 15 happening. The very guy who did the intervening said he
16 didn't know one way or another, and when he was interviewed
17 the first possibility he offered was the guy's -- the
18 shooter's gun jammed. Which is not reloading.

19 Q. This is a New York Times article on the Waffle House
03:55 20 shooting international.

21 MR. SHOWELL: I'm just going to read what's on the
22 screen there, Judge: Officials from detectives to trauma
23 surgeons at Vanderbilt University Medical Center said there
24 would have been greater bloodshed had a 29 year old customer,
03:55 25 James Shaw, Junior, not wrestled the rifle away from Mr.

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1 Reinking while he was reloading.

2 Q. Do you have any reason to believe that that New York

3 Times article is inaccurate?

4 A. Yes.

03:55 5 Q. And what is the basis for that belief that the New York

6 Times article is inaccurate?

7 A. The basis is -- I'm sorry; are you finished?

8 Q. I am now.

9 THE COURT: Why don't you restate the question.

03:55 10 And can you just hold off on your answer until we

11 have it on the record correctly?

12 THE WITNESS: Yes.

13 Q. What's your basis for believing that New York Times

14 report is inaccurate?

03:56 15 A. Because in both print interviews and video interviews of

16 that very individual, James Shaw, Junior, who purportedly had

17 "wrested the gun away while the shooter was reloading", he

18 himself said I'm not at all sure that's why I did it. He said

19 in fact I think it was the gun jammed or whatever; and then in

03:56 20 other interviews he said reloading or the gun jammed or

21 whatever. In other words, he repeatedly said he didn't know

22 it was reloading. And so it's just sheer guesswork, including

23 guesswork by the New York Times that that's why the guy was --

24 James Shaw, Junior was able to wrest the gun away.

03:56 25 Q. And you became aware of those interviews between August

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1 2nd of this year and today when I took your deposition?

2 Because when I took your deposition you had no knowledge of
3 this incident whatsoever, notwithstanding that it occurred in
4 your primary field of study.

03:56 5 A. That's correct. Because your bringing it up elicited my
6 interest, so I looked into it and found no, it can't be
7 confirmed that the guy was reloading when he was tackled. So
8 once again confirmed my generalization -- not that one case
9 would have meant anything, I should put this in context, it's

03:57 10 hardly a basis for making policy, but no, not even in that one
11 case do we know that the guy was tackled while he was
12 reloading; in this case it's the New York Times reporter's
13 speculation, not anything based on what Mr. Shaw said.

14 MR. SHOWELL: Your Honor, I like the Court's
03:57 15 permission to introduce that New York Times article into
16 evidence, which means we will have to get a copy to the Court
17 somehow.

18 MR. THOMPSON: Your Honor, we would also like to put
19 in the news stories and the video interviews of the actual
03:57 20 person to counter that.

21 THE COURT: Absolutely.

22 MR. SHOWELL: We haven't seen those, Judge --

23 MR. THOMPSON: We haven't seen this either.

24 THE COURT: I'll admit the New York Times article,
03:58 25 and I'll allow Mr. Thompson to present whatever other articles

1 the professor relied upon. You can confer with your
2 adversary, and if there's an objection you may send in a
3 letter and I'll make a determination on that.

03:58 4 THE WITNESS: I have copies right here if that's of
5 any help.

6 THE COURT: We'll see what happens. No one sought
7 to admit them yet, Professor.

8 MR. SHOWELL: Your Honor, I have nothing further at
9 this moment.

03:58 10 THE COURT: Okay, thank you.

11 So, Mr. Thompson?

12 MR. THOMPSON: Well, if Professor Kleck has the
13 articles, would the Court prefer that deal off line with our
14 friends at the State --

03:58 15 THE COURT: I'd just show it to them; that's what
16 happened with you and the New York Times.

17 MR. THOMPSON: Yeah, we had all of 30 seconds.

18 MR. SHOWELL: Your Honor, if he's going to show me
19 those articles now I'd like to have the opportunity to examine
03:58 20 him about them.

21 THE COURT: I don't know if I'm going to allow that,
22 Mr. Showell. I mean you just brought up this New York Times
23 article; I need to keep the record to be reasonable and fair
24 to both sides. The doctor says they're not what the other
03:59 25 articles indicate, so I don't see what more you need to go

1 into those with him. He's just going to present articles that
2 showed this is what he's relying on.

3 MR. SHOWELL: As you wish, your Honor.

4 THE COURT: So at any rate, Mr. Thompson, why don't
5 you obtain the article.

6 MR. THOMPSON: Do you remember the articles there?

7 THE WITNESS: They're in my bag.

8 MR. THOMPSON: With the Court's permission, why
9 don't you come down and get them.

10 (Witness retrieving bag.)

11 MR. THOMPSON: Your Honor, there are just few
12 logistical issues; we need to get a printout of the New York
13 Times article, so the State's e-mailing to my colleague, we
14 have a printer here in the court, so we're going to print that
15 as a courtesy to the State. And then Professor Kleck's going
16 to bring forward his articles from his bag, your Honor. I
17 apologize about this.

18 MR. SHOWELL: And I do appreciate that courtesy; Mr.
19 Thompson has been more than gracious.

20 THE COURT: That's great; thanks, Mr. Showell.

21 (Pause in proceedings.)

22 MR. THOMPSON: So your Honor, this might take a
23 moment or two to print these; I don't know if the Court would
24 prefer that we just agree with the State right now that I'm
25 not going to object to the New York Times, he's not going to

1 object to mine and then we can just submit them, you know,
2 later this afternoon.

3 THE COURT: Okay.

4 MR. SHOWELL: No objection, your Honor.

04:01 5 THE COURT: No objection; all right. So, then they
6 are both admitted, but we need numbers on them so we can
7 identify them. How long is this going to take? I'll wait --

8 MR. THOMPSON: That's fine, it might be five minutes
9 or so.

04:01 10 THE COURT: Okay. Let me know when you're ready.

11 MR. THOMPSON: Okay, we will let you know when we're
12 ready, your Honor. Thank you so much.

13 (Recess.)

14 MR. THOMPSON: Your Honor, the plaintiffs move to
04:26 15 admission of PX-85, 86, and 87.

16 MR. SHOWELL: No objection to those, your Honor --

17 THE COURT: Wait a second. PX --

18 MR. THOMPSON: 85, your Honor, which will be James
19 Shaw, Junior, on why he rushed the Waffle House shooter; and
04:26 20 then we've got PX-86, which is Hero Customer Wrestled Rifle
21 Away From Waffle House Shooter; and then our final one is
22 PX-87, which is Suspect in Tennessee Waffle House Shooting Had
23 Guns Seized After Arrest Near White House Last Year.

24 THE COURT: Okay. So P-85, 86, 87 are admitted.

04:27 25 MR. THOMPSON: Thank you, your Honor.

1 (Plaintiff's Exhibits 85, 86 & 87 were marked into
2 evidence.)

3 THE COURT: And then Mr. Showell, what did you have?

4 MR. SHOWELL: Your Honor we have DX-118, which are
5 materials from the Doug Koenig website, Doug Koenig World
6 Champion Shooter Hunter and Family Man.

7 THE COURT: So that's admitted.

8 (Defendants' Exhibit 118 was marked into evidence.)

9 MR. SHOWELL: That's 118. And then 119, your Honor,
10 is a New York Times article, Waffle House Shooting Suspect Is
11 In Custody National Police Say.

12 THE COURT: Okay. So you don't have any objections;
13 right?

14 MR. THOMPSON: No, your Honor, no objection.

15 THE COURT: So they're admitted.

16 (Defendants' Exhibit 119 was marked into evidence.)

17 THE COURT: How about the Las Vegas video; has that
18 been admitted?

19 MR. SHOWELL: Your Honor, I'd move the Las Vegas
20 video in evidence if it hasn't already been admitted.

21 MR. THOMPSON: It's a legislative fact; no
22 objection.

23 THE COURT: Okay. So it the Las Vegas video is
24 admitted. How do I have that, like on a --

25 MR. SHOWELL: You have it on thumb drive video file.

1 THE COURT: It's already on it?

2 MR. LUCAS: Yes, your Honor.

3 MR. THOMPSON: So it was already deemed admitted.

4 MR. LUCAS: Yes.

04:28 5 MR. SHOWELL: That is true actually.

6 MR. THOMPSON: So it's already in.

7 THE COURT: So that's admitted also.

8 MR. THOMPSON: Yes, your Honor.

9 THE COURT: Any other --

04:28 10 MR. SHOWELL: Just to thank the Court for its time
11 and attention to this.

12 THE COURT: Thank you.

13 MR. THOMPSON: Likewise.

14 THE COURT: I thought the parties did a great job
04:28 15 presenting the case. The idea of relying on the declarations
16 so we didn't have to take the direct testimony was really
17 pretty smart, I thought that was a good idea, so it saved us a
18 lot of time. So I look forward to getting the briefs and
19 finding of facts and conclusions of law.

04:29 20 Did we deal with the hearing? It's at 3:00 p.m.,
21 not at noontime or whatever else I had. Okay, thank you.
22 Have a great weekend.

23 (Counsel say thank you.)

24

25

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